राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 11 अप्रैल, 2018 / 21 चैत्र, 1940

हिमाचल प्रदेश सरकार

TRANSPORT DEPARTMENT

NOTIFICATION

Shimla-2, *the* 10th *April,* 2018

No. TPT-A(1)-3/2015.—The Governor, Himachal Pradesh, in exercise of the power conferred upon him under Section 68 of Motor Vehicles Act, 1988 (Act No 59 of 1988) and all

other powers enabling him in this behalf, is pleased to constitute the State Transport Authority, Himachal Pradesh, Shimla, which shall exercise powers and perform functions enumerated in sub-section 2 of above Section, of the act *ibid*:—

Official Member

1. Additional Chief Secretary (Transport) to the Government of Himachal Pradesh . .*Chairman*

2. Director (Transport) Himachal Pradesh Shimla-171004 . .*Member*

3. Secretary, State Transport Authority Shimla, H.P. . .*Member Secretary*

Non-Official Member

1. Sh. Pal Verma, Advocate, r/o Vill. Shylah, P.O. Lohara, Tehsil Balh, District Mandi, H.P. . .*Member*

2. Sh. Chaman Pundeer, r/o VPO Dehrian, Tehsil Jawalaji, District Kangra, H.P. . .*Member*

3. Sh. Harpal Singh Gill, r/o VPO Raipur Sadouna, Tehsil and District Una, H.P. . .*Member*

4. Smt. Jindu Devi, r/o Vill Kanyal, P.O. Chhiyal Tehsil Manali, District Kullu, H.P. . .*Member*

By order,

RAM SUBHAG SINGH,
Additional Chief Secretary (Transport).

HIMACHAL PRADESH VIDHAN SABHA SECRETARIAT
SHIMLA-171004

NOTIFICATION

Shimla- 4, the 10th April, 2018

No. VS/Estt./6-62/81-II.—On the recommendations of the Departmental Promotion Committee, the Hon'ble Speaker is pleased to promote and appoint Sh. Sanjeev Gupta, Section Officer as Under Secretary in the pay scale of Rs. 15600-39100+ 6600GP with immediate effect.

He will be entitled to exercise option for pay fixation under the saving clause as per clarification contained in letter number Fin (PER)B(7)-1/2009 dated 19.09.2009 within a period of one month.

Sd/-
Secretary,
H. P. Vidhan Sabha.

LAW DEPARTMENT

NOTICE

Shimla-2, the 7th April, 2018

No. LLR-E(9)-4/2018-Leg.—Whereas, the following Advocates of District Sirmaur H.P. have applied for appointment of Public Notary in the place and area mentioned against their names under rule 4 of the Notaries Rules, 1956:—

Sl. No.	Name of Advocate	Area for which they have applied for appointment of Notary
1.	Shri Nitin Gupta, Advocate s/o Shri Viney Kumar Gupta, r/o H. No. 262/11, Chauhan Ka Bag Nahan, District Sirmaur, H.P.	Sub-Division Nahan
2.	Shri Abhay Kant Aggarwal, Advocate s/o Shri Prem Chand Aggarwal, r/o Above Aggarwal Motors Gunnu-Ghat Nahan, District Sirmaur, H.P.	Sub-Division Nahan

Therefore, I undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of fifteen days from the date of publication of this notice in Rajpatra, H.P. against their appointment as Notary Public in the places mentioned against their names of their respective Sub-Divisions.

(Competent Authority),
DLR-cum-Deputy Secretary (Law-Legislation).

———————

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Shimla, the 21st March, 2018

No. HHC/Admn. 3(270)/88-I.—12 days earned leave *i.e.* on and with effect from 02-04-2018 to 13-04-2018, with permission to prefix Sunday falling on 01-04-2018 and suffix Second Saturday and Sunday falling on 14-04-2018 and 15-04-2018, is hereby sanctioned, in favour of Smt. Sanjokta Thakur, Court Master of this Registry.

Certified that Smt. Sanjokta Thakur is likely to join the same post and at the same station from where she proceeds on leave after the expiry of the above leave period.

Certified that Smt. Sanjokta Thakur would have continued to officiate the same post of Court Master but for her proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001

NOTIFICATION

Shimla, the 23rd March, 2018

No. HHC/Admn.16 (8)74-IV.—Hon'ble the Acting Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(1) (b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Vikas Kumar and Ms. Parveen Kumari, Advocates, Hamirpur as Oath Commissioners at Hamirpur for a period of two years with immediate effect for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001

NOTIFICATION

Shimla, the 23rd March, 2018

No. HHC/Admn.16 (20)75-III.—Hon'ble the Acting Chief Justice, in exercise of the powers vested in him U/S 139(b) of the Code of Civil Procedure, 1908, U/S 297(1) (b) of the Code of Criminal Procedure, 1973 and Rule 5(vi) of the H.P. Oath Commissioners (Appointment & Control) Rules, 2007 has been pleased to appoint Sh. Pankaj Kumar, Advocate, Ghumarwin as Oath Commissioner at Ghumarwin for a period of two years with immediate effect for administering oaths and affirmations on affidavits to the deponents under the aforesaid Codes and Rules.

By order,
Sd/-
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala the 7th December, 2017

No.: Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	189/17	Dhian Chand	D.C.-*cum*-Chairman Red Cross Society Kangra,HP	16-10-2017
2.	490/15	Lal Chand	E.E. HPPWD, Killar	04-10-2017
3.	507/15	Sunita Devi	E.E. HPPWD, Killar	04-10-2017
4.	489/15	Ram Dei	E.E. HPPWD, Killar	04-10-2017
5.	499/15	Muni Kumari	E.E. HPPWD, Killar	04-10-2017
6.	509/15	Naino Devi	E.E. HPPWD, Killar	04-10-2017
7.	513/15	Bimla	E.E. HPPWD, Killar	04-10-2017
8.	502/15	Laxmi Devi	E.E. HPPWD, Killar	04-10-2017
9.	506/15	Bhagtu Ram	E.E. HPPWD, Killar	04-10-2017
10.	511/15	Bindro Kumari	E.E. HPPWD, Killar	04-10-2017
11.	498/15	Dhyan Singh	E.E. HPPWD, Killar	04-10-2017
12.	492/15	Tek Chand	E.E. HPPWD, Killar	04-10-2017
13.	435/15	Anchal Goswami	M/s GVK EMRI	07-10-2017
14.	139/13	Prem Chand	E.E. HPSEB, Dharampur	09-10-2017
15.	140/13	Hem Singh	E.E. HPSEB, Dharampur	09-10-2017
16.	141/13	Hari Chand	E.E. HPSEB, Dharampur	09-10-2017
17.	273/16	Surinder Kumar	M.D. M/s GVK EMRI	17-10-2017
18.	114/16	Om Prakash	M.D. M/s GVK EMRI	17-10-2017
19.	137/17	Banita Devi	CMO Bilaspur	24-10-2017
20.	147/17	Bhoop Singh	G.M. M/s Sapna, Cars Pvt. Ltd.	27-10-2017
21.	214/16	Sebo Kumari	E.E. HPPWD, Killar	16-10-2017
22.	118/16	Khem Raj	E.E. HPPWD, Killar	16-10-2017
23.	173/16	Pritam Singh	E.E. HPPWD, Killar	16-10-2017
24.	200/16	Kishan Dei	E.E. HPPWD, Killar	16-10-2017
25.	64/16	Krishni	E.E. HPPWD, Killar	16-10-2017
26.	205/16	Narinder Kumar	E.E. HPPWD, Killar	16-10-2017
27.	157/13	LPS Dainik Bhogi	Lahaul Potato	27-10-2017
28.	231/14	Karam Chand	M/s GVKEMRI	27-10-2017

By order,
R.D. DHIMAN, IAS,
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 189/ 2017

Shri Dhian Chand s/o Shri Dharam Chand, r/o Village Kuthar Thati, P.O. Sansai, Tehsil and District Kangra, H.P. .. *Petitioner*.

Versus

1. The Deputy Commissioner-*cum*-Chairman, District Red Cross Society Kangra, H.P.
2. The Secretary, Red Cross Society, Dharamshala, District Kangra, H.P. .. *Respondents.*

16-10-2017 Present: Petitioner with Sh. Umesh Nath Dhiman, adv.

None for the respondent no.1

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent No.2

Case taken up today in pursuance to application under Section 151 C.P.C. for withdrawal of case moved by the applicant Sh. Dhian Chand who has claimed re-instatement in service with the respondents raising industrial dispute in pursuance to which reference No. 189/17 has been received from the Labour Commissioner, H.P. Application under Section 151 C. P. C. is supported with affidavit reveals that applicant wants to withdraw this case due to some technical reasons. In his statement on oath before this Court applicant has prayed for withdrawal of case. Statement recorded and placed on file. Sh. Manoj Kumar, adv. has identified the applicant/petitioner.

In view of the statement so made by the applicant/petitioner, claim petition/reference No. 189/2017 is dismissed as withdrawn without any order as to costs.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced :
16-10-2017

Sd/-
(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-*Industrial,*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 490/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Shri Lal Chand s/o Shri Mani Dass, r/o Village Banwas, P.O. Luj, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P.
.. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Lal Chand s/o Shri Mani Dass, r/o Villlage Banwas, P.O. Luj, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 19-12-2011 regarding his alleged illegal termination of services during November 1997 suffers from delay and latches? If not, Whether termination of services of Shri Lal Chand s/o Shri Mani Dass, r/o Villlage Banwas, P.O. Luj, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during November, 1997, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster-roll basis in the year 1993 who continuously worked till 2000 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to

petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2000. He further prayed for reinstatement in service *w.e.f.* year 2000 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1993 to 2000 be counted 160 days continuous service and to any other relief petitioner is entitled and regularization of the services of petitioner *w.e.f.* 1-1-2002 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come, First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 19-12-2011 *qua* his termination of service during November, 1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . *OPP*

2. Whether termination of the services of the petitioner by the respondent *w.e.f.* November, 1997 is/was illegal and unjustified as alleged? . . *OPP*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPR.*

4. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES No.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1993 continuously worked till 2000 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till September 2004 whereas the claimant/petitioner alleges that he had worked from 1993 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in 1997 and not in 1993.

Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 till 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 36 days in the year 1997, 58 days in 2003 and 102 days in 2004 and thus a total of his service in 1997 to 2004 in 03 years he had worked for 196 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 102 days and thus immediately in preceding 12

calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of ''Last come First go'' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. counsel for petitioner relied upon Ex. PW1/C the order dated 27-8-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from

his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court 2007 (*supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the

appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *vs.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....."(Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *vs.* The Sirhind Co-Operative Marketing *-cum-* Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference**

by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.One lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that

a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** vs. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra,*** claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the

judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 196 days as per mandays chart on record and that the services of petitioner were disengaged in the year 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** *i.e.* demand notice was given on 19-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** vs**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

ISSUE No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room. Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 507/2015

Date of Institution : 09-11-2015

Date of Decision : 04-10-2017

Ms. Sunita Devi d/o Shri Gian Chand, r/o V.P.O. Gosati Karyas, Tehsil Pangi, District Chamba, H.P. .. *Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi) District Chamba, H.P. .. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Ms. Sunita Devi d/o Shri Gina Chand, r/o V.P.O. Gosati Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 23-12-2011 regarding her alleged illegal termination during October, 2001 suffers from delay and latches? If not, Whether termination of services of Ms. Sunita Devi d/o Shri Gina Chand, r/o V.P.O. Gosati Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October 2001, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieve workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act,

1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 2004 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-1999 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2001 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2001 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27-8-2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 23-12-2011 *qua* her termination of service during October 2001 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . *OPP.*

2. Whether termination of the services of the petitioner by the respondent during October 2001 is/was illegal and unjustified as alleged? . . *OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . . OPR

Relief

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1990 continuously worked till October 2001 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till October 2001 whereas the claimant/petitioner alleges that he had worked from 1990 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged from 1997 till October 2001 and not from 1990 upto 2004. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to October 2001. She has also stated on oath that no

notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October 2001 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October 2001. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 200 ½ days in the year 1997, 104 days in 1998, 140 days in 1999, 142 days in 2000 and 95 ½ days in 2001 and thus a total of her service in 1997 to 2001 in 05 years she had worked for 682 days in her entire service period. Be it noticed that except the years 1998 to 2001 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 95½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not

followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October 2001 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. counsel for petitioner relied upon Ex. PW1/C the order dated 27-8-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October 2001, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally

retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above

judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *vs*. The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (H.P.) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. One lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. counsel for claimant/ petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs**. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting

an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase** vs**. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** vs**. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs**. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her

services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 682 days as per mandays chart on record and that the services of petitioner were disengaged in October 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** *i.e.* demand notice was given on 23-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** vs**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

ISSUE No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the

reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room. Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 489/2015

Date of Institution : 09-11-2015

Date of Decision : 04-10-2017

Smt. Ram Dei w/o Shri Dhyan Singh, r/o Village Tikri, P.O. Luj, Tehsil Pangi, District Chamba, H.P. .. *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. .. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial raised by the worker Smt. Ram Dei w/o Shri Dhyan Singh, r/o Village Tikri, P.O. Luj, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer,

Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in Labour Office Chamba on dated 16-11-2011 regarding her alleged illegal termination of services during year, 1998 suffers from delay and latches? If not, Whether termination of services of Smt. Ram Dei w/o Shri Dhyan Singh, r/o Village Tikri, P.O. Luj, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during year, 1998, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster-roll basis in the year 1990 who continuously worked till 1998 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1998 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1998. She further prayed for reinstatement in service *w.e.f.* year 1998 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 1998 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-1999 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1994 who remained engaged till 1998 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1998 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27-8-2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during year 1998 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . *OPP*
2. Whether termination of the services of the petitioner by the respondent during year, 1998 is/was illegal and unjustified as alleged? . . *OPP*
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP*
4. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1	:	Discussed
*Issue No.*2	:	Yes
*Issue No.*3	:	Discussed
*Issue No.*4	:	No
Relief	:	Petition is partly allowed awarding compensation of Rs.1,00,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster-roll basis in the year 1990 continuously worked till 1998 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till 1998 whereas the claimant/petitioner alleges that he had worked from 1990 to 1998. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged *w.e.f.* 1994 and not from 1990. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages alongwith seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to 1998. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 1998 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities

under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after the year 1998. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 197 days in the year 1994, 184 days in 1995, 157 days in 1996, 156 days in 1997 and 163 days in 1998 and thus a total of her service in 1994 to 1998 in 05 years she had worked for 857 days in her entire service period. Be it noticed that petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1998 the petitioner had merely worked for 163 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster-roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 1998 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined

service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** *vs.* **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. counsel for petitioner relied upon Ex. PW1/C the order dated 27.8.2015 of Hon"ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1998, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A. R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned

Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** vs. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....."(Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *vs*. The Sirhind Co-Operative Marketing-*cum*- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. One lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable.
>
> [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/ petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** *vs.* **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been

contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs**. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 857 days as per mandays chart on record and that the services of petitioner were disengaged in the year 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **thirteen years** *i.e.* demand notice was given on 16-11-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (**SC**). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State**

Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** vs**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

ISSUE No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K.K. Sharma),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 499/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Ms. Muni Kumari d/o Shri Suram Chand, r/o Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by worker Ms. Muni Kumari d/o Shri Suram Chand, r/o Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 24-12-2011 regarding her alleged illegal termination of services during November, 1997 suffers from delay and latches? If not, Whether termination of services of Ms. Muni Kumari D/O Shri Suram Chand, R/O Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during November, 1997, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till 1997 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi, Tehsil and District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged

petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1997 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1997. She further prayed for reinstatement in service *w.e.f.* year 1997 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1992 to 1997 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-2001 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1994 who remained engaged till 1997 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1997 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27-8-2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 24.12.2011 *qua* her termination of service during November, 1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during November, 1997 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES No.1 TO 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster roll basis in the year 1992 continuously worked till November, 1997 with the respondent

is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1994 till 1997 whereas the claimant/petitioner alleges that he had worked from 1992 to November, 1997. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged *w.e.f.* 1994 and not from 1992. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to 1997. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the month of November, 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after the year 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work

as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 185 ½ days in the year 1994, 103 days in 1995, 173 days in 1996 and 165 ½ days in 1997 and thus a total of her service in 1994 to 1997 in 04 years she had worked for 627 days in her entire service period. Be it noticed that petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1997 the petitioner had merely worked for 165 ½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after November, 1997 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Sections 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27-8-2015 of Hon'ble High Court of H.P. *vide* which the orders qua termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in November, 1997, she had remained unemployed and was not earning anything thereafter as such

was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs**. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the

jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** vs**. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. *vs.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh *vs*. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to

the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference: Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute—

Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement

compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs**. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** vs**. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra***, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs**. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held

on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 I) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 627 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1997 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** *i.e.* demand notice was given on 24-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** vs**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 509/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Smt. Naino Devi w/o Late Shri Prem Chand, r/o Village Tikri Luj, P.O. Luj, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi) District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Naino Devi w/o Late Shri Prem Chand, r/o Village Tikri Luj, P.O. Luj, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I. & P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated nil received in Labour Office on dated 16-11-2011 regarding her illegal termination of services during August, 2004 suffers from delay and latches? If not, Whether termination of services of Smt. Naino Devi w/o Late Shri Prem Chand, r/o Village Tikri Luj, P.O. Luj, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during August, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieve workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster roll basis in the year 1988 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G

of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1988 to 2004 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-1997 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1991 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27-8-2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated nil *qua* her termination of service during August, 2004 by respondent suffers from the *vice* of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.1,70,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster roll basis in the year 1988 continuously worked till August, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1991 till August, 2004 whereas the claimant/petitioner alleges that he had worked from 1991 to 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in 1991 and not in 1988. Admittedly, the

reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1991 to August, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima fac*ie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 139 days in the year 1991, 61 days in 1992, 177 ½ days in 1994, 15 days in 1995, 159 days in 1996, 195 ½ days in 1997, 171 days in 1998, 101 days in 1999, 105 days in 2000, 102 days in 2001, 153 days in 2002, 134 ½ days in 2003 and 86 days in 2004 and thus a total of her service in 1991 to 2004 in 13 years she had worked for 1599.5 days in her entire service period. Be it noticed that except the years 1991, 1992, 1995, 1996, and 1999 to 2004 petitioner had worked for

more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 95½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs**. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Sections 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27-8-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in August, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that

'**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** vs**. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh vs. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs**. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D. A. for the State, Ld. Counsel for claimant/ petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar**

Paul vs**. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs**. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** vs**. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L. R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment

as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 13 years and actually worked for 1599½ days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e*. demand notice was given on 16.11.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** vs**. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,70,000/- (Rupees one lakh seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue no. 4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,70,000/- (Rupees one lakh seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 513/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Smt. Bimla w/o Shri Bhan Chand, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. *…Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Bimla w/o Shri Bhan Chand, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I. & P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 22-11-2011 regarding her alleged illegal termination of services during July, 2004 suffers from delay and latches? If not, whether termination of services of Smt. Bimla w/o Shri Bhan Chand, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P., during July, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieve workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of

respondent in the year 2004. She further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 2004 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-2003 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27.8.2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 22-11-2011 *qua* her termination of service during July, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during July, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

5. Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.1,20,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till July, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba district and remained engaged from 1994 to July, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in July, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the

persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 67 days in the year 1994, 125 days in 1995, 59 days in 1996, 29 days in 1997, 61.5 days in 1998, 103.5 days in 1999, 79 days in 2000, 83 days in 2001, 87 days in 2002, 73 days in 2003 and 59 days in 2004 and thus a total of her service in 1994 to 2004 in 11 years she had worked for 826 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 59 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a

year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2004 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27.8.2015 of Hon'ble High Court of H. P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in July, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** *vs.* **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is

no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner

has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable.
>
> [*Paras 21 and 22]*

> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul *vs.* BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it

has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase *vs.* Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh *vs.* General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra,*** claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 11 years and actually worked for 826 days as per mandays chart on record and that the

services of petitioner were disengaged in July, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 22.11.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon"ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 502/2015
Date of Institution : 09.11.2015
Date of Decision : 04.10.2017

Ms. Laxmi Devi d/o Shri Man Singh, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Ms. Laxmi Devi d/o Shri Man Singh, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 20-12-2011 regarding her alleged illegal termination of services during October, 2000 suffers from delay and latches? If not, Whether termination of services of Ms. Laxmi Devi D/O Shri Man Singh, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 2000, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage Beldar on muster roll basis in the year 1994 who continuously worked till 1999 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1999. She further prayed for reinstatement in service *w.e.f.* year 1999 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1994 to 1999 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-2003 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1995 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the

petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1999 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27.8.2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 20-12-2011 *qua* her termination of service during October, 2000 by respondent suffers from the *vice* of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during October, 2000 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

Issues no.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1995 till October, 1999 whereas the claimant/petitioner alleges that he had worked from 1994 to 1999. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged *w.e.f.* 1995 and not from 1994. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to 1999. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after the year 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 52 days in the year, 1995, 154 days in 1996, 145 days in 1997, 162 days in 1998 and 143 ½ days in 1999 and thus a total of her service in 1995 to 1999 in 05 years she had worked for 656.5 days in her entire service period. Be it noticed that except the years 1995 to 1997 and 1999 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 143 ½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 1998 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, ld. counsel for petitioner relied upon Ex. PW1/C the order dated 27-8-2015 of Hon'ble High Court of H.P. vide which the orders qua termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1998, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the

case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the Jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** *v.* **Telecom District Manager, Karnataka**[4] it was held by this Court as follows:—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) in view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The

plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld.

counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ workman 9% P.A. will be payable. [*Paras 21 and 22*].
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for

reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 656.5 days as per mandays chart on record and that the services of petitioner were disengaged in the year 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** *i.e.* demand notice was given on 20-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the

petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua facts* made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

ISSUE NO. 4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the record room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 506/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Ms. Bhagtu d/o Shri Thakur Chand, r/o Village Udaini, P.O. Luj, Tehsil Pangi, District Chamba, H.P. ...*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Ms. Bhagtu d/o Shri Thakur Chand, r/o Village Udaini, P.O. Luj, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I. & P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P., *vide* demand notice dated 18-01-2012 regarding his alleged illegal termination of services during June, 1998 suffers from delay and latches? If not, Whether termination of services of Ms. Bhagtu d/o Shri Thakur Chand, r/o Village Udaini, P.O. Luj, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during June, 1998, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till 1998 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act.

The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1998 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1998. She further prayed for reinstatement in service *w.e.f.* year 1998 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1992 to 1998 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-2002 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1993 who remained engaged till 1998 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1998 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27.8.2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 18.1.2012 qua her termination of service during June, 1998 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during June, 1998 is/was illegal and unjustified as alleged? ...*OPP.*

3. If Issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

5. Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 continuously worked till 1998 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1993 till 1998 whereas the claimant/petitioner alleges that he had worked from 1992 to 1998. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged *w.e.f.* 1993 and not from 1992. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division, Chamba district and remained engaged from 1993 to 1998. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the year 1998 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after the year 1998. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work

intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 62 days in the year 1993, 201.5 days in 1994, 149.5 days in 1995, 34 days in 1996 and 36 days in 1998 and thus a total of her service in 1993 to 1998 in 05 years she had worked for 482 days in her entire service period. Be it noticed that except the years 1993, 1995, 1996 and 1998 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1998 the petitioner had merely worked for 36 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 1998 even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1993 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27.8.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1998, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same**'. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c)

of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-*cum*- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her

acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1998 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the

workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held

on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 482 days as per mandays chart on record and that the services of petitioner were disengaged in the year 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** *i.e.* demand notice was given on 18-1-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from the date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 511/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Ms. Bindro Kumari d/o Shri Bheem Chand, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. …*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Ms. Bindro Kumari d/o Shri Bheem Chand, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I. & P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 21-12-2011 regarding her alleged illegal termination of services during June, 1996 suffers from delay and latches? If not, Whether termination of services of Ms. Bindro Kumari d/o Shri Bheem Chand, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I. & P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P., during June, 1996, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till 1996 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G

of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1996 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1996. She further prayed for reinstatement in service *w.e.f.* year 1996 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 1996 be counted 160 days continuous service and regularization of the services of petitioner *w.e.f.* 1-1-1999 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1990 who remained engaged till 1996 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 1996 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order dated 27-8-2015 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 21-12-2011 *qua* her termination of service during June, 1996 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during June, 1996 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No. 1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1990 continuously worked till June, 1996 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub-Division Chamba District and remained engaged from 1990 to June, 1996. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in the month of June, 1996 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after the year 1996. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 129 days in the year 1990, 182 days in 1991, 167 days in 1992, 68 days in 1993, 38 days in 1994, 133 days in 1995 and 58 days in 1996 and thus a total of her service in 1990 to 1996 in 07 years she had worked for 775 days in her entire service period. Be it noticed that except the years 1990 and 1993 to 1996 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1996 the petitioner had merely worked for 58 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 1998 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1990 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27.8.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in 1998, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for

her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being

lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in

view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1996 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge

duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before

that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 775 days as per mandays chart on record and that the services of petitioner were disengaged in the year 1996 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fifteen years** *i.e.* demand notice was given on 21-12-2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon"ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No.4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H. P.)

Ref. No. : 498/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Shri Dhyan Singh s/o Shri Saran Dass, r/o Village Seri, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. *..Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Dhyan Singh s/o Shri Saran Dass, r/o Village Seri, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated nil received in the Labour Office Chamba on dated 31-10-2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and latches? If not, whether termination of services of Shri Dhyan Singh s/o Shri Saran Dass, r/o Village Seri, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2005. He further prayed for reinstatement in service *w.e.f.* year 2005 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1995 to 2005 be counted 160 days continuous service and to any other relief petitioner is entitled and regularization of the services of petitioner *w.e.f.* 1-1-2002 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order dated 27-8-2015 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D. R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till September, 2004 whereas the claimant/petitioner alleges that he had worked from 1995 to 2005. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged *w.e.f.* 1997 to 2004 and not from 1995 to 2005. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1995 till 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The

case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 19 days in the year 1997, 58 days in 1999, 48 days in 2000, 57 days in 2001, 132 days in 2002, 110 days in 2003 and 97 days in 2004 and thus a total of his service in 1997 to 2004 in 07 years he had worked for 521 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 97 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004

even at the time when junior persons were re-engaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27-8-2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 s*upra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieoner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir**

Singh vs. General Manager, Haryana Roadways, Hissar reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra*, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows.

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the

Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by

court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing**-cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief '.**

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra)* even if not met requirement, cannot be a ground to reinstate the petitioner and it is only

compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 521 days as per mandays chart on record and that the services of petitioner were disengaged in the year 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 31-10-2011. Taking into consideration factors mentioned above in pursuance to

judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 492/2015
Date of Institution : 09-11-2015
Date of Decision : 04-10-2017

Shri Tek Chand s/o Shri Tika Ram, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Tek Chand s/o Shri Tika Ram, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 04-01-2012 regarding his alleged illegal termination of services during August, 2004 suffers from delay and laches? If not, whether termination of services of Shri Tek Chand s/o Shri Tika Ram, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during August, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1997 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service *w.e.f.* year 2004 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to 2004 be counted 160 days continuous service and to any other relief petitioner is entitled and regularization of the services of petitioner *w.e.f.* 1-1-2004 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has

maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers and closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29-04-2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 04-01-2012 *qua* his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.

2. Whether termination of the services of the petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? ...*OPP*.

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1: Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation of Rs. 85,000/- per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 to 3:

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till August, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division, Chamba District and remained engaged from 1997 till August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination

has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 148 days in the year 1997, 160 days in 1998, 76 days in 1999, 103 days in 2000, 45 days in 2001, 134 days in 2003 and 84 days in 2004 and thus a total of his service in 1997 to 2004 in 07 years he had worked for 750 days in his entire service period. Be it noticed that except the years 1997 and 1999 to 2004 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 84 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for re-employment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Dy. D.A. representing respondent has made futile attempt to justify engagement junior worker and their retention in service in pursuance to Awards passed by Labour Court. On the other hand, Ld. Counsel for petitioner relied upon Ex. PW1/C the order dated 27.8.2015 of Hon'ble High Court of H.P. *vide* which the orders *qua* termination passed as against respondent and several other were quashed. That being so the relief was granted in favour of the petitioner who was directed to be reinstated with others. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 10 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability for complying the provisions of Sections 25-G and 25-H of the Act and as such, it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Counsel for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon"ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra),* it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the Learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra*. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra*.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows.

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it

cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra*. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963-Section 5-Industrial Dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable.
>
> [Paras 21 and 22]

> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial**

disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.

21. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon‟ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 750 days as per mandays chart on record and that the services of petitioner were disengaged in the year 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e*. demand notice was given on 04-01-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon‟ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** *supra*, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs. 85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from the date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

Issue No. 4 :

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OFSH. K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 435/2015
Date of Institution : 05-10-2015
Date of Decision : 07-10-2017

Shri Anchal Goswami s/o Shri Sushil Goswami, r/o Village Habibpur, P.O. Kawari, Tehsil Nagrota Bagwan, District Kangra, H.P. . .*Petitioner.*

Versus

1. The Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla.
2. The Employer/Manager, M/s GVK EMRI, J P Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office) through its Executive Officer.

3. The Managing Director, M/s Adecco India Private Limited, No. 2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore (Corporate Office).

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Madan Thakur, Adv.

Sh. Rajinder Thakur, Adv.

For the Respondent No. 1 : Sh. Sanjeev Singh Rana, Dy. D.A.

For the Respondent No. 2 : Sh. Rajat Sahotra, Adv.

For the Respondent No. 3 : Sh. Manish Katoch, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Shri Anchal Goswami, s/o Shri Sushil Goswami, r/o Village Habibpur, P.O. Kawari, Tehsil Nagrota Bagwan, District Kangra, H.P. *vide* letter dated 04-08-2014 by (i) the Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla, (ii) the Employer/Manager, M/s GVK EMRI, J P Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office), (iii) the Managing Director, M/s Adecco India Private Limited, No. 2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, than whether the workman is entitled to re-engagement with the above mentioned employer along with back wages and consequential benefits?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that State of H.P. had started emergency medical services in the year 2010 to improve the health care being provided to needy people in the entire State of H.P. in particular emergency condition to the general public besides emergency response No.108. It is alleged that with a view to achieve of its goal, Government of H.P. had entered into 'Public Private Partnership Agreement' dated 9.7.2010 (hereinafter called the on agreement for brevity) with respondent No.2 M/s GVK Emergency Management and Research Institute (hereinafter called GVK EMRI for brevity) and was fully financed by grant-in-aid released by the Government of H.P. The claimant/petitioner is alleged to have been engaged initially as trainee *vide* letter dated 11-2-2011 & had undergone training for 45 days at GVK-EMRI, TB Sanatorium Dharampur, District Solan with respondent No.2 and thereafter *vide* letter dated 3rd April, 2011 respondent no.3 M/s. Adecco India Pvt. Ltd. had issued letter of appointment to claimant/petitioner as Emergency Medical Technician (hereinafter called for short as EMT for brevity) initially for a period of one year on contract *w.e.f.* 3-4-2011 to 3-4-2012 however petitioner was posted with GVK EMRI Kangra. Averments made in the claim petition further revealed that petitioner was appointed for a period of one year but contract was to be renewed periodically which was duly renewed from time to time and thus petitioner was in continuous service of the respondents No. 2 and 3 but during subsistence of his services as EMT, on 22-8-2013 claimant/petitioner had got another letter of appointment dated 22-8-2013 from respondent No.2 for

one year which was come to an end on 21-8-2014. It is also alleged that during his service period, claimant/petitioner had been awarded certificate(s) for appreciation on 25-11-2012, July 2013, September, 2014, October, 2013 and March, 2014 by respondent No.2 which had been endorsed by respondent No.1 who also countersigned appreciation certificates alongwith respondent No.2. Not only this, work of claimant/petitioner was highlighted in the official magazine EMCARE published by respondent No.2 which establishes that petitioner had served the respondents and public with full devotion. The grievances of the petitioner remains that during the subsistence of service contract, claimant/petitioner received a letter dated 4-8-2014 and 13-8-2014 issued by respondent No.2 whereby he was intimated about non-renewal of fixed term contractual employment of petitioner whereupon claimant/petitioner had made representation on 14-8-2014 and subsequent reminder letter dated 20-8-2014 to respondent No.2 for renewal of contract but the same yielded no result. It is further stated that respondent No.2 after issuing the above said letter to claimant/petitioner also acted in unreasonable manner by issuing another letter dated 24-7-2014 which was a warning letter in which false allegations had been levelled against the petitioner to which petitioner submitted reply and explained his position stipulating therein petitioner had always discharged his duties sincerely and faithfully and allegations levelled against the petitioner were totally false. It is also averred in the claim petition that another letter dated 23-7-2014 for violations of certain rules of respondent company was sent by registered letter which had been despatched on 2.8.2014 and thus the claimant/petitioner alleges to have stated that respondent had made antedating warning letter so as to justify its subsequent act by not renewing contract of employment *vide* letter dated 4-8-2014. Averments made in the claim petition further revealed that in his reply to letter issued by respondent No.2, the petitioner has consistently maintained to have attended two patients on the relevant dates mentioned in the warning letter and thus petitioner alleges to have not violated any rules mentioned in it. It further transpires from the petition that petitioner had discharged his duties sincerely and faithfully besides services of EMTs were still required by respondent No.2 but the contract of service of petitioner had been illegally with ulterior motive was not renewed without any valid reason on the basis of false allegations.

4. The claim petition further reveals that the respondent No.2 taking undue advantage of Clause 1.1.1. sub-clause (a) of Agreement dated 9-7-2010 entered into between State of Himachal Pradesh and respondent No.2 whereby State of Himachal Pradesh had agreed for complete autonomy and operational freedom to respondent No.2 and that Clause in question specifically stipulated "selection, hiring, appraisals, transfers and termination/dismissal of staff from HR agencies, preparation of training procedures, all employees of GVK EMRI will be appointed on contract and the duration of the contract (not more than five years) will be clearly mentioned so that there is no long term obligation for employment. The contract with the employees shall be **liable to be terminated by giving two months notice by either side**". It is alleged that under the agreement in recitals, day-to-day functioning of respondent No. 2 was to be supervised by the Advisory Board consisting of three members from respondent No.2, three nominees of Government of H.P. which showed that every function of respondent No.2 was to be supervised by the Government of H.P. so that respondent No.2 did not exploit unemployed youth who dedicated to work in emergency. It is further stated that respondent No. 2 has not only acted in arbitrary manner but also violated its own rule stipulated in Clause 1.1.1 wherein it has been specified that the services of employee shall be liable to be terminated by giving **two months** notice by either side. It is alleged that concocted complaint against claimant/petitioner was done with the object to remove the petitioner from service and thus action of respondent was manifestly punitive in nature and same had been done in the violation of principles of natural justice. It further transpires from petition that petitioner aggrieved with the act of respondents had filed CWP No. 6406/2014 in which Hon'ble High Court *vide* its order dated 9-4-2015 permitting petitioner to raise industrial dispute by issuing demand notice in pursuance to which petitioner had issued demand notice dated 29-4-2015 to respondents. It is alleged that Hon'ble High Court *vide* order dated 9-4-2015 has specifically ordered that in the interest of justice and looking into that claimant/petitioner and others were working on meager

salaries, the employer had been directed not to terminate the service of applicant/petitioner and other co-petitioners of CWP No.1583/2014 who had not completed contractual period. It transpires from the claim petition that employer had been further directed by Hon'ble High Court that in case fresh hands were engaged, the claimant/petitioner shall be given preference in view of provisions of Section 25-H of the Industrial Disputes Act but despite that the respondent No. 2 has ignored the directions passed by the Hon'ble High Court and recruited 82 EMTs between 1-8-2014 to 12-9-2015 details of which had been obtained by the petitioner under RTI Act 2005. It is alleged that the service of petitioner was permanent in nature and the services of petitioner as EMT was always and continuously required by the respondent No.2 but the services of petitioner had been terminated in gross violation of Agreement dated 9-7-2010 between Government of H.P. and respondent No.2 and provisions of Industrial Disputes Act. It is alleged that partnership agreement between the respondents is still existing and that emergency medical services are still continuing and were required and the same project/scheme was permanent in nature and the act of the respondents was stated to be discriminatory, unconstitutional and in violation of provisions of Industrial Disputes Act and accordingly letters dated 4-8-2014 *qua* non-renewal of contractual employment of petitioner and warning letter dated 24-7-2014 issued by the respondent No.2 have been prayed to be quashed and petitioner is entitled to be reinstated as EMT with all consequential benefits *i.e.* seniority and arrears of pay/wages etc.

5. The respondent No.1 Mission Director, National Health Rural Mission, Govt. of H.P. contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, cause of action. On merits stated that Emergency Ambulance Service was run by the State of H.P. in the name of H.P. Atal Swasthya Seva (108) and had thereafter renamed as National Ambulance Service (108) being run by State of H.P. in the interest of patient care and public at large under the public private partnership mode through GVK-Emergency Management and Research Institute (GVK-EMRI) *i.e.* respondent No. 2 for which an agreement as well as Agreement/ MOU dated 9-7-2010 had been entered with respondent No. 2 besides that the scheme was funded by the State Government. It is further stated by respondent No.1 that the ambulance procured under the Atal Swasthya Sewa had been registered in the name of Director Health Services, H.P. so as to keep the assets with the Government of H.P. as agreement dated 9-7-2010 under public private partnership between government and respondent No. 2 was for a limited period initially for five years which could be terminated by either party as per terms of the agreement and thus registration of ambulance in the name of Director Health Services, HP was got done with the boanfide reasons so assets of govt. such as vehicles in ERS remained in its control. It is also stated that M/s. GVK-EMRI respondent No.2 had further entered into agreement with M/s. Adecco Flexion Workforce Solutions Private Limited respondent No. 3 for hiring of manpower and staff to run initially Atal Swasthya Seva and later the National Ambulance Scheme on certain specific terms and conditions besides maintained that respondent No. 1 was not the principal employer however respondent No.2 was the principal employer as has also been referred in Certificate of Registration issued by Labour Department, H.P. The plea of respondent no.1 further remains that while providing autonomy and operational freedom to GVK EMRI *vide* clause 1.1.0 of MOU dated 9-7-2010 respondent no.2 it was specifically observed that there shall be operational freedom and autonomy which included amongst other things in respect of following-"selection, hiring, appraisals, transfers and termination/dismissal of staff, freedom to avail the staff from HR agencies, preparation of training procedures". It is further alleged that if there was any violation of above conditions or there was ever exploitation of youth by the respondent No.1 claimant/petitioner be called upon to prove the same. It is further alleged that MOU/agreement entered into between the parties the basic facilities and infrastructure was to be provided by Govt. of H.P. for which needful instructions had been issued to the concerned sub offices by the department *vide* letters dated 22-1-2011 and 2-9-2011. It further remains the case of respondent No.1 that the services of petitioner had never been terminated by it besides maintained that petitioner had been gainfully employed after non-renewal of contractual service agreement. As such, there was no cause of action of petitioner/claimant as

against respondent No. 1. Accordingly, petition has been sought to be dismissed. The reply of respondent no.1 is supported by an affidavit sworn in by respondent No. 1.

6. The respondent No.2 GVK EMRI contested claim petition, filed separate reply *inter-alia* taken preliminary objections of maintainability, cause of action, *locus standi*, suppression of material facts. On merits admitted that claimant/petitioner was appointed initially as a trainee who had undergone training for 45 days with respondent No.3. It is alleged that as a matter of fact, petitioner was appointed by respondent no.3 as EMT and not by the respondent No. 2 for period of one year as the name of petitioner existed on the rolls of respondent No. 3 which was providing manpower resources under control and supervision to respondent No. 2. Admitted that on 22-8-2013 in reference to the fresh interview and discussions with the claimant/petitioner, the respondent No.2 had issued a contractual letter of appointment to the petitioner for a period of one year was to automatically come to an end on 21-8-2014 which had been accepted by petitioner by signing the said appointment letter. It is denied that petitioner had discharged his duties with full devotion rather he was found to have committed severe and gross misconducts as he absented from his job without prior intimation and sanction from his superiors. It is alleged that petitioner has not been not only found guilty of misconduct levelled against him but had also abused his colleagues misbehaved on duty and when petitioner was asked to explain his ill behaviour, he had misbehaved with staff and wrote false and frivolous complaints against them to the Head office of respondent No. 2. It is alleged that petitioner was issued show cause notice several times and was asked to explain his misconduct but of no avail. It is alleged that certificate of appreciation had been issued by respondent No. 2 to the petitioner to motivate him to be a good employee and to encourage the petitioner to avoid his habit of misbehavour with his colleagues and senior officials and be diligent in his duty. Further admitted that contract of service of the claimant/petitioner was in subsistence till 21-8-2014 but his contract was not renewed and *vide* letter dated 4-8-2014 which issued by respondent No. 2 and received on 13-8-2014 by petitioner stipulated *qua* non-renewal of fixed term contractual employment which came to an end on 21.8.2014. It is asserted that as per letter of appointment dated 22-8-2013 the term of appointment was for a period of one year which was to automatically come to an end on 21.8.2014 and term of employment which was expiring was well intimated to the petitioner in advance on 4.8.2014 so that petitioner might look for some other appointment opportunities while petitioner still worked with respondent No. 2 thereafter for other 15 days or so. It is admitted that petitioner had written a letter and made representation dated 4.8.2014 and 14-8-2014 for considering request for renewal of his contractual appointment. It is emphatically denied that respondent No.2 acted in unreasonable manner and made a concocted warning letter dated 24-7-2014 which had been received by the petitioner on 7-8-2014 rather the allegations contained in warning letter are stated to be correct and true facts because petitioner was found guilty of violating Code 7 and Code 16 of Rules of respondent No. 2 which showed not attending calls, refusing case, call disconnecting besides violation of code 7 was stated to be serous misconduct as the petitioner was employed in emergency services. It has been denied that petitioner had discharged his duties sincerely and faithfully rather reply filed to the warning letter by petitioner also contained false allegation. It has been denied that respondent Nso.2 had taken undue advantage of agreement. In so far as requirement of notice period of termination for two months is concerned, it has been maintained that infact the contract of petitioner had not been terminated rather contract of petitioner had expired after completion of its tenure of one year. It is further contended that Govt. of H.P. was fully monitoring respondent No. 2 so that no exploitation of unemployed youth could take place and that respondent No. 2 was strictly adhering to all of the labour laws besides maintained that petitioner has not been removed from service rather his term for employment came to an end as same was not renewed.

7. In its reply respondent No.2 further admitted that Hon'ble High Court of H.P. *vide* order dated 9-4-2015 had directed not to terminate the services of claimant/petitioner who had not completed contractual period. It is maintained that the services of petitioner had been terminated on

completion of contractual period and not between and before its expiration. It has also been admitted by the respondent No. 2 that Hon'ble High Court had directed that in case fresh hands were engaged, claimant/petitioner shall be given preference in view of provisions of Section 25-H of the Industrial Disputes Act. It is claimed that at the time of engaging fresh hands respondent No. 2 had advertised employment notification and interview dates in the local daily newspaper in State of H.P. but neither claimant/petitioner or other co-petitioners who were previously employed with the respondent No. 2 appeared or even petitioner did not apply at the time of interview for new appointment. As such, petitioner despite notice for fresh recruitment, did not appear however denied that the services of petitioner was permanent in nature as claimed by him which was stated to be for a fixed term period and was well aware of fact petitioner's employment was contractual which was accepted by petitioner by signing letter of appointment dated 22-8-2013 issued by respondent No. 2. Accordingly, petition was sought to be dismissed.

8. The respondent No.3 M/s. Adecco India Pvt. Ltd. contested the claim petition, filed separate reply *inter-alia* taken preliminary objections *qua* maintainability, estoppel, suppression of material facts, misjoinder of parties. On merits admitted engagement of petitioner by respondent no.3 on the request of respondent No. 2. It is stated that respondent No.3 had so far provided 555 workers to respondent No. 2 which were required and out of them 535 were still working. It is further alleged that an agreement dated 10-8-2010 Ex. RW3/C entered between respondent No.2 and 3 was in existence which was valid for 3 years when petitioner had undergone training and was appointed by respondent No.3 and on expiry of agreement appointment letter dated 22.8.2013 for contractual appointment of petitioner was issued by respondent No. 2.

9. The petitioner filed three separate rejoinder(s) to the three separate replies filed by the respondent Nos.1 to 3 reiterated his stand as maintained in the claim petition and denying all allegations levelled in replies prejudicial to his claim as against these respondents.

10. In order to prove his case, petitioner had examined himself as PW1 tendered/proved their affidavits Ex. PW1/A, copy of agreement dated 9-7-2010 Ex. PW1/A1, copy of letter of engagement dated 12.7.2017 Ex. PW1/B, copy of letter of appointment dated 3.4.2011 Ex. PW1/C, copy of letter of appointment dated 22-8-2013 Ex. PW1/D, copy of certificate dated 25-12-2011 Ex. PW1/E, copy of certificate dated July, 2013 Ex. PW1/F, copy of certificate dated September, 2013 Ex. PW1/G, copy of certificate dated October, 2013 Ex. PW1/H, copy of certificate dated March, 2014 Ex. PW1/I, copy of EMCARE Ex. PW1/J, copy of letter regarding non renewal of fix term contractual agreement Ex. PW1/K, copy of letter regarding request for renewal of contract dated 14.8.2014 Ex. PW1/L, copy of letter regarding reminder of letter dated 14.8.2014 Ex. PW1/M, copy of warning letter dated 24.7.2014 Ex. PW1/N, copy of envelop Ex. PW1/O, copy of reply to the warning letter dated 24.7.2014 Ex. PW1/P, copy of order dated 9-4-2014 passed in CWP No. 6406/14 Ex. PW1/Q, copy of demand notice Ex. PW1/R, copy of letter dated 25.8.2015 Ex. PW1/S, copy of letter dated 2-11-2015 Ex. PW1/T, copy of detail of EMTs recruited from 1.8.2014 to 12.9.2015 Ex. PW1/U, copy of full and final settlement Mark-B and closed the evidence. On the other hand repudiating the evidence led by the petitioner, respondent no.1 has examined Shri Pankaj Rai, Mission Director, National Health Mission, H.P. Shimla as RW1, tendered/proved his affidavit Ex. RW1/A, copy of agreement dated 9.7.2010 Ex. RW1/B, copy of agreement for service dated 10-8-2010 Ex. RW1/C, copy of certificate of registration dated 29-3-2012 Ex. RW1/D, copy of letter dated 22-1-2011 Ex. RW1/E, copy of letter dated 17-6-2013 Ex. RW1/F and closed evidence.

11. Respondent No.2 had examined Shri Daya Ram, Authorized Representative GVK EMRI, Dharampur, District Solan, H.P. as (RW2), tendered/proved affidavit of said Daya Ram Ex. RW2/A-1, copy of Authority Letter dated 6-7-2017 Ex. RW2/A2, copy of agreement dated 9-7-2010 Ex. RW2/A3, copy of terms and condition of employment Ex. RW2/A4 which

corresponds to Mark-A, copy of letter of appointment Ex. RW2/A5, copy of complaint dated 28-4-2014 Ex. RW1, copy of warning letter dated 24-7-2014 Ex. RW2, copies of minutes of meeting Mark-A, Mark-B and Mark-C respectively and closed evidence.

12. Respondent No.3 however had examined Shri Raj Wadhwa, Senior Executive Compliances, M/s. Adecco India Pvt. Ltd. as RW3 who filed his affidavit Ex. RW3/A, copy of Authorization Letter dated 12-4-2017 Ex. RW3/B, copy of Agreement for services dated 10-8-2010 Ex. RW3/C between respondent no. 3 and 2 and closed evidence.

13. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. for respondent No.1 as well as Ld. Counsel representing respondents Nos. 1 and 2, gone through records of the case carefully relevant for disposed of this case.

14. From the contentions raised, following issues were framed on 21-11-2016 for determination:

1. Whether termination of services of the petitioner by the respondents *vide* letter dated 4-8-2014 is/was illegal and unjustified as alleged? ...*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form? ...*OPR* 1, 2 & 3

4. Whether the petitioner has not approached the Court with clean hands as alleged? ...*OPR* 2 & 3.

5. Whether the petitioner has no *locus standi* to file the case as alleged? ...*OPR* 2.

6. Whether claim petition is bad for mis-joinder of necessary party as alleged? *OPR* 2.

7. Whether the petitioner has no cause of action to file the present case as alleged? ...*OPR* 2.

8. Whether the petitioner is estopped from filing petition by his act and conduct as alleged? If so, its effect? ...*OPR* 3.

9. Whether the petitioner has suppressed and misrepresented the true and material facts from the Court as alleged. If so, its effect? ...*OPR* 2 & 3.

Relief.

15. For the reasons detailed hereunder, my findings on the above issues are as follows:

Issue No.1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Issue No. 6 : No

Issue No. 7 : No

Issue No. 8 : No

Issue No. 9 : No

Relief : Petition is allowed partly per operative part of award.

REASONS FOR FINDINGS

Issue No.1, 2 And 7

16. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

17. It is admitted case of the parties that Ex. PW1/A1 is Public Private Partnerhsip Agreement dated 9.7.2010 entered into between the State of Himachal Pradesh through its Principal Secretary (Health) and GVK EMRI (hereinafter called as EMRI for brevity) through its Chief Executive Officer with the object to provide delivering and integrating professional emergency response service covering medical care by providing technology in the emergency care operations as well as to provide integrated Emergency Response Service (hereinafter called as ERS for brevity). It is admitted case of respondent No.1 that respondent No.2 had been engaged to provide services in State of Himachal Pradesh with the object to improve health care services particularly in emergency situation to **pregnant women, neonates, mother of neonates infants and children** (in serious ill health conditions) **and any other health emergencies in general population and thereby helping State to achieve the critical millennium development goals in health sector which included efficient pre-hospital care and ambulance service.** It is admitted case of the respondent No.2 that it had engaged respondent No.3 to provide manpower on its own rolls to run emergency service when petitioner was initially appointed by respondent No. 3 who issued appointment letter to petitioner as EMT for a period of one year and was under control and supervision of respondent No.3. It is equally admitted case of respondent Nos. 2 and 3 that agreement for services dated 10.8.2010 Ex. RW1/C was entered between them was valid for three years *i.e.* till 2013. It is admitted case of respondent no.2 that letter of appointment dated 22-8-2013 Ex. PW1/D was issued which was for one year, after expiration of agreement of services dated 10-8-2010 EX. RW3/C between respondent Nos. 2 and 3. It is admitted case of respondent no.2 that letter dated 4-8-2012 *qua* non-renewal of appointment was issued to the petitioner was factually received by him on 14-8-2014 which had been issued by respondent No. 2 with the object to notify petitioner in advance so that petitioner might be able to seek some other suitable job. It also remains the case of respondent No. 2 that prior to issuance of letter Ex. PW1/K, a warning letter dated 24.7.2014 was issued as petitioner was found guilty of having violated Code 7 and Code 16 of Rules framed by respondent No.2 but there was such stipulation in letter dated 4-8-2014. In the backdrop of foregoing admitted facts on record, evidence led by the parties needs to be scanned to determine if termination of services of petitioner by non-renewal of contractual letter of appointment dated 22-8-2013 by respondent No. 2 *vide* letter dated 4.8.2014 was illegal and unjustified.

18. Before adverting to merits of this case, it would be relevant to determine the relationship between respondent No.1 with respondent No.2 and petitioner. It would, therefore, be

relevant to go through the recitals of Agreements named as Public Private Partnership Agreement dated 9-7-2010 Ex. PW1/A-1 entered into between State of H.P. and respondent No.2 with the object to achieve its goal in health care scheme *i.e.* reduction of infant mortality rate, maternal mortality rate etc. and in general to improve the health conditions amongst the people of the State by improving their ability to access to healthcare services in case of emergencies besides the State Government intended to provide a single Emergency Response Number (108) for responding to medical, police and fire emergencies. The agreement in question further reveals that the State Government was desirous of mainstreaming and integrating 'ERS' with other initiatives to provide continuity of medical services across the continum of 'ERS' and other **clinical, therapeutic service by enlarging the scope of the professional and efficient pre-hospital care and ambulance services.** The agreement Ex. PW1/A-1 stipulates that State Government under Clause 1.1.0 is to provide autonomy and operational freedom to GVK EMRI. Clause 1.1.1 is reproduced below for reference:

"Clause 1.1.1

recognize GVK EMRI as the State Level Nodal Agency to provide emergency response services across the State, in coordination with the public agencies, which will help drive greater transparency, agility, and better citizen service. **GVK EMRI shall have the operational freedom and autonomy which includes amongst other things**, the ability to make independent decisions in respect of the following:

(a) **Selection, hiring, appraisals, transfers and termination/dismissal of staff, freedom to avail the staff from HR agencies, preparation of training procedures; all employees of GVK EMRI HP will be appointed on Contract and the duration of the Contract (not more than five years) will be clearly mentioned so that there is no long term obligation for employment. The contract with the employees shall be liable to be terminated by giving two months' notice by the either side.** The contract with employees shall not exceed the term of this Agreement. The terms of the contracts for appointment will be finalized by the Executive Council constituted under the Clause 1.3.3 of the agreement.

(b) Processes and procedures followed for provision of emergency response services.

(c) Infrastructure required for providing emergency response services;

(d) Re-appropriation of the budget within the overall operational expenditure provision;

(e) Promotional activities undertaken to create awareness;

(f) Proliferation of the best practices;

(g) Technology development and deployment;

(h) Design of ambulances and equipping them, as required:

Provided in the interest of transparent functioning, GVK EMRI, would furnish details pertaining to the above activities to the State Government if the latter party so requires, and can also *suo-motu* seek consultation of the State Government where needed in respect of 1.1.1 (b) to

(h) above and in other matters of operation of ERS for improving the service quality".

19. A bare glance at the above referred provisions of agreement Ex. PW1/A-1 would establish that GVK EMRI respondent No.2 was given full operational freedom and autonomy which included amongst other needs the ability to take many independent decision in respect of selection, hiring, appraisals, transfers and termination/dismissal of staff from HR agencies, preparation of training procedure besides, all employees of respondent No.2 were to be appointed on contract and the duration of the contract was to be not more than five years which was clearly mentioned in the object that there was no long term obligation for employment however the contract with the employees could be **terminated by giving two months notice by either side**. Rule 1.1.2 entrust GVK EMRI with the responsibility of operationalization of agreed number of ambulances from time to time at the State Government's cost and expenses to meet the objective of the ERS. It can be noticed from claim petition that claimant/petitioner has claimed that State of Himachal Pradesh through respondent No.1 Mission Director National Rural Mission Health was the Principal Employer of petitioner.

20. To appreciate controversy in issue, it would be relevant to go through oral evidence. RW1 Shri Pankaj Rai working as Mission Director, National Health Rural Mission, Govt. of H.P., Shimla has been examined who stepped into witness box as RW1 tendered/proved his affidavit Ex. RW1/A in which he has maintained on oath that as per emergency ambulance service which was earlier named as Atal Swasthya Seva (108) has now been renamed as National Ambulance Service (108) being run by State of H.P. in the interest of patient care and public at large under the public private partnership mode through GVK-Emergency Management and Research Institute (GVK-EMRI) *i.e.* respondent No.2 for which an agreement-cum-MOU Ex. PW1/A1 has been entered into between the parties on 9-7-2010. He has further stated that ambulance had been registered in the name of Director Health Services, H.P. so as to keep the assets with the Govt. of H.P. moreso when the project was funded by Govt. of H.P. and agreement Ex. PW1/K dated 9-7-2010 was for a fixed period which could also have been terminated at any time and for said reason ambulances, vehicles were registered in the name of Director Health Services, H.P. He has further stated that respondent No. 2 had entered into agreement dated 10-8-2010 with respondent No.3 M/s Adecco Flexion Workforce Solutions Private Limited for hiring of manpower and staff to run the National Ambulance Scheme on certain specific terms and conditions. Not only this, the Certificate of Registration has been issued to respondent No. 2 GVK EMRI for carrying out emergency service with respect to Atal Swasthya Seva (108) which was later named as National Ambulance Scheme (108) and that Principal employer of petitioner was GVK EMRI respondent No. 2 and that respondent No.1 was not the Principal Employer of petitioner. The said witness who is respondent No.1 as well, has categorically maintained that autonomy and operational freedom was given to respondent no.2 as specifically provided in Clause 1.1.0 of MOU/Agreement dated 9-7-2010. It has been specifically laid down under Clause 1.1.1 that operational freedom and autonomy had been given to respondent No. 2 *vide* agreement Ex. PW1/A-1 to take decision in respect of selection, hiring, appraisals, transfers and termination/dismissal of staff from HR agencies, preparation of training procedure by respondent No.2. RW1 has consistently maintained that the service of petitioner had never been terminated by respondent No.1 as petitioner was not its employee besides no action of respondent No. 1 as against petitioner was discriminatory and unconstitutional under the provisions of the Industrial Disputes Act. In cross examination, this witness has admitted that State of H.P. was having several social welfare schemes being run from time to time in public interest besides admitted that State of H.P. had provided emergency services under 'ESR' scheme when ambulances were decided to be deployed for emergencies in health care of general public in pre hospitalization. Although RW1 has admitted that agreement Ex. PW1/A-1 was entered into for State of H.P. through Principal Secretary, Health which could not be construed as State of H.P. being Principal Employer for the purpose of engagement of employees by respondent No. 2. Similarly, admission of RW1 that actual operational expenditure which was comprised of salary, recruitment costs fuel repairs and maintenance, consumables, communication system ambulances were to be borne by State of H.P. besides releasing grant-in-aid would not make respondent No.1

Principal Employer. Even registration of ambulances in the name of Director Health Services, HP is no of significance determining relationship between employees recruited by GVK EMRI as it has come in the evidence as well as in the MOU/agreement dated 9-7-2010 that although agreement in question was initially for a period of five years but was renewable with the consent of the parties from time to time with object for retention of infrastructure as well as vehicles in the name of Director Health Services, H.P. so that after expiration of agreement Ex. PW1/A infrastructure and vehicles remained with respondent No.1. Be it stated that this would not make relationship of respondent No.1 as Principal Employer with employee. Crosse xamination of RW1 by Ld. Counsel for respondent No.2 reveals that for running ERS respondent No.2 could appoint employees on contractual basis but contract of appointment was co-terminus with agreement/MOU Ex. PW1/A-1. It has also been admitted by RW1 that according to agreement Ex. PW1/A-1 respondent No. 2 could employ any person on contract for fixed period. Testimony of RW1 revealed that respondent No. 2 to have separate independent operational autonomy and State of H.P. had to merely provide infrastructure, vehicles and grant-in-aid so as to meet out salaries and other expenses but even this evidence is not sufficient to conclude that respondent No.1 was principal employer as the government through respondent no.2 was implementing social welfare scheme to various categories of people as mentioned in the agreement Ex. PW1/A-1. Enough has been emphasized by Ld. Counsel for the petitioner that under Clause 1.3.3 of agreement/MOU Ex. PW1/A-1 Chief Secretary of State was Chairman whereas eight others were heads of department Govt. of H.P. besides four members were of respondent No. 2 and special invitees. Ld. Dy. District Attorney for respondent No.1 on the other hand has contended that even when Advisory Council which was to meet once in three months was to take major decisions were purely supervisory in nature providing salaries and other expenses, infrastructures, building, grant-in-aid with the object of social welfare of public at large as stated in foregoing paras but in the matter of recruitment of employees and termination of their services, respondent No. 2 had complete separate independent autonomy although rules provided in agreement Ex. PW1/A-1 dated 9.7.2010 were to be followed. As such when petitioner had been recruited or terminated or say his contract of employment was not renewed in no manner involves any action on part of respondent No.1 although for not giving two months notice prior to termination by respondent No.2 vitiates removal of petitioner under Clause 1.1.1 of agreement referred to above. Clause 2.0 of agreement aforestated stipulates obligation of GVK EMRI towards its employees to which respondent No.2 has specifically agreed. Clause 2.1.5 Sub (a) is reproduced below for reference:

Clause 2.1.5

"(a) Recruit, position, and train required human resources, including communications /dispatch officers, physicians, pilots (drivers), medically trained persons (Emergency Medical Technicians or EMTs), supervisors, trainers, managers and leaders (finance, HR, IEC, quality, Administrative services, etc.) to support the ERS and provide the emergency response services;

21. Ld. Counsel for petitioner had taken this court through Recitals in particular Clause 'C' which dealt with all expenditure to be borne by Govt. of H.P. and last at page 2 of agreement under sub-Clause C (i) it is provided that if after meeting all expenditure, respondent No.2 is left with surplus amount or say there were saving, those will be refunded to respondent no.2 to Govt. of H.P. The arrangement of refund to Govt. of H.P. if excess funds were released also does not make respondent no.1 Principal Employer in any manner as refund of funds was merely arrangement under agreement Ex. PW1/A-1.

22. RW2, Shri Daya Ram the only witness examined by GVK EMRI has sworn affidavit Ex. RW2/A-1 in which he has specifically stated that petitioner was initially engaged by respondent No.3 as trainee for 45 days and after the training, petitioner was given letter of engagement dated

11-2-2011 *vide* which petitioner was initially appointed for a period *w.e.f.* 3-4-2011 to 3-4-2012 on rolls of respondent No.3. He has further deposed that Ex. RW3/C agreement dated 10-8-2010 was entered into between respondent Nos. 2 and 3 for hiring, deploying manpower with the respondent No.2 besides maintained that according to agreement Ex. PW1/A-1 respondent No.2 was Principal Employer and respondent No.3 was contractor however petitioner was engaged by respondent No.2 under the supervision and control and on the roll of respondent No.3 besides maintained that petitioner was initially engaged for a period of one year on the basis of contractual employment but the services of petitioner were not at all permanent in nature. RW2 has further deposed on oath that petitioner was engaged by respondent No. 2 on 22-8-2013 till 21-8-2013 for fixed period. Significantly, in cross-examination of RW2 Shri Daya Ram, the sole witness examined by respondent No. 2 has specifically admitted that respondent No. 2 was Principal Employer of petitioner who was recruited at the instance of respondent No. 2 but was on rolls of respondent No. 3 however admitted in cross-examination that according to agreement respondent No. 2 could take independent decision to keep or terminate the services of any of its employee. Cross-examination of Ld. Counsel for respondent No.3 reveals that agreement dated 10-8-2010 between respondent Nos. 2 and 3 was for a period of three years which was not in existence when petitioner was engaged by respondent No. 2 in year 2013 by issuing appointment letter and disengaged in year 2014 from service. Significantly, he has also admitted that termination of petitioner in the year 2014 did not relate to respondent No. 3 as agreement between respondent Nos. 2 and 3 had expired in August, 2013 which was only for three years. Since the respondent No.3 was the contractor who was to provide service for recruitment of employees to respondent No.2 on contract basis as per agreement Ex. RW3/C, respondent No. 3 had ceased to have relationship with respondent No.2 and the petitioner when appointment letter dated 22-1-2013 was issued by respondent No. 2 which was consequently not renewed before the expiry period on 21-8-2014.

23. Now referring to testimony of petitioner *qua* State of H.P. and respondent No.1 being principal employer, it is pertinent to state that affidavit Ex. PW1/A of petitioner stipulates that he has reiterated his stand as maintained in the claim petition. In cross-examination, he has admitted that respondent No.1 had entered into public private partnership agreement Ex. PW1/A-1 with respondent No.2 according to which services were to be rendered to general public, female, children in pre hospitalization free of cost. PW1 petitioner has categorically admitted in cross-examination by Ld. Dy. D.A. for respondent No.1 that petitioner was neither appointed nor engaged by respondent No.1 which goes to show that respondent No.1 was not at all Principal Employer of the petitioner. Although PW1 has admitted that payment of salary was being made by respondent No.3 but this arrangement continued till Ex. RW3/C agreement dated 10-8-2010 remained in force between respondent Nos. 2 and 3 subsisted. Cross-examination of PW1 by Ld. Counsel for the respondent No. 2 further revealed that the petitioner was not engaged by the respondent No. 3 but his salaries were paid by the respondent No. 3 on the basis of agreement dated 10-8-2010 Ex. RW1/C besides admitted that respondent No. 2 had issued letter on 22-8-2013 Ex. RW1/D which was a contractual appointment for specific period and the term of agreement was to expire on 21.8.2014. In crossexamination by Ld. Counsel for respondent No.3, it has been specifically admitted that since 2011 till 2013 petitioner was on rolls of respondent No.3 but in 2013 respondent No. 2 had given fresh appointment to petitioner with which respondent No. 3 had no concern. From the above said evidence on record, it can be safely concluded that initially when petitioner was engaged as trainee and thereafter as EMT on the rolls of respondent No. 3 till 2013 and even at that time also respondent No. 2 was Principal Employer. The evidence establishes that agreement dated 10-8-2010 entered between respondent Nos. 2 and 3 was for a period of three years which came to an end when respondent No. 2 itself appointed petitioner by issuance of separate letter of appointment dated 22-8-2013 for a fixed term as stated above. Since the status of respondent No. 2 continues to be that of Principal Employer on 22-8-2013 as well as before as has been admitted by the only witness RW2 Daya Ram on behalf of respondent no.2 that on termination of agreement of services between respondent Nos. 2 and 3, it could not be stated that

status of respondent No. 2 being the Principal Employer had ceased to exist at any point of time. Not only this, as has been discussed in foregoing paras, respondent No. 2 has been provided with complete independent autonomy in which respondent No.1 had no role in either selection, recruitment or appointment irrespective fact that working of respondent No. 2 was only to be monitored and supervised by through Advisory Council as stipulated in clause 1.3.3. of Agreement dated 9-7-2010 Ex. PW1/A-1.

24. Ld. Counsel for petitioner has relied upon Clause 10 dealing with ownership which provided the State Government shall hand over the possession of ERS complex, ambulances and all other assets created under this scheme and funded by State Government to respondent No. 2 GVK EMRI for the purpose of operationalizing and running emergency response services and the said clause also provided all the moveable and immovable properties as also software acquired and created including generated under the scheme shall vest in the State Government. By referring this clause, it has been contended with vehemence that all properties being used by State Government and ultimately all the ambulances were being run in the name of Director Health Services besides the agreement in question has been entered between Principal Secretary (Health) of Govt. of H.P. establishes that Govt. of H.P. was Principal Employer. All these averments and aspects highlighted by Ld. Counsel for petitioner in no manner established that State of H.P. or respondent No.1 was Principal Employer of petitioner who was on contractual employment. When appointment letter was issued by respondent No. 2 on 22-8-2013 appointing petitioner as EMT, it had employed him as a Principal Employer and not on behalf respondent No.1 or for the State of H.P. as discussed in foregoing paras. The respondent No. 2 had independent autonomy and to take independent decision in the matter of engagement and termination of the employees as discussed in foregoing para. Mere fact that there existed an Advisory Council headed by Chief Secretary of the State Government as well as respondent No. 2 as has come in evidence would not *ipso facto* lead to inference that State of H.P. was Principal Employer and under obligation not to terminate service of petitioner who was its employee rather petitioner himself has admitted that when he was initially engaged in the year 2011 he was appointed by respondent no.3 on whose roll he continued till 2013 when respondent No.1 was Principal Employer and on change of situation when agreement between respondents No. 2 and 3 expired, respondent No. 2 issued appointment letter to petitioner on 22.8.2013 which would not change the status of respondent No. 2 as Principal Employer irrespective the fact that his contract for hiring manpower with respondent No. 3 had ceased to exist.

25. The plea of respondent No.1 that respondent No. 2 was Principal Employer also finds support from Ex. RW1/D Certificate of Registration issued by Labour Department, H.P. showing respondent No. 2 as Principal Employer. In view of the same, it would be unsafe to hold that respondent No.1 or State of H.P. was the Principal Employer of petitioner rather it was respondent No.2 was Principal Employer when letter dated 4-8-2014 *qua* non-renewal of contractual letter of appointment was issued preceded by letter of appointment dated 22-8-2013 of petitioner.

26. Admittedly, petitioner had been initially engaged by respondents whose salary etc. was being paid by the respondent No. 3 although received through respondent No.2 from respondent No.1 however was deployed for rendering services with respondent No.2. It is also admitted case of the parties that agreement of service Ex. RW3/C between respondent No.3 and respondent No.2 was valid for a period for **three** years *i.e.* from 2010 till August, 2013. It is also not in dispute that letter of appointment dated 22.8.2013 Ex. PW1/D was issued by respondent No. 2 to petitioner consequent upon expiry of Ex. RW3/C as stated above. A bare glance at the appointment letter Ex. PW1/D would reveal that petitioner was appointed for specific period of employment for one year being coterminous with MOU with Government of H.P. Ex. PW1/A-1 prior to it respondent No.3 had issued a appointment letter Ex. PW1/C which shows that petitioner was employed from 3-4-2011 to 3-4-2012 and in Clause (6), it has been provided that employment with respondent No. 2 would be on deputation basis as EMT and petitioner will not be regular employee either of

respondent No. 3 or where he was deputed to work *i.e.* with respondent No. 2 on same terms and conditions for three years as per contract of employment when respondent No. 2 issued employment letter Ex. PW1/D.

27. In so far as termination of petitioner by respondent *vide* letter dated 4-8-2014 is concerned, Ld. Counsel for respondent No. 2 has vehemently contended that petitioner was on contractual employment and contract of employment was to come to an end on 21-8-2014 automatically and thus by virtue of definition 2(oo) Sub-Clause (bb) the petitioner is excluded from purview of retrenchment Clause (bb) aforestated provided that termination of service of workman as result of non renewal of contract of employment between employer and workman concerned on its expiry. Clause (oo) of Section 2 stipulates retrenchment as termination by employer of service of workman for any reason whatsoever otherwise then as punishment inflicted by way of disciplinary action. It can be safely observed that termination should not be a punishment inflicted by way of disciplinary action and Clause (oo) would cover petitioner if his contract of employment was not renewed after expiry of contract of employment. It may be pertinent to mention here that petitioner after issuance of appointment letter dated 22-8-2013 issued by respondent No. 2 had not signed the same accepting terms and conditions of engagement in job as prior to it letter of appointment had been issued by respondent No. 3 irrespective of fact that petitioner was working with respondent No.2 for past three years. By not signing Ex. PW1/D dated 22-8-2013, the conditions stipulated therein were not binding on petitioner.

28. Ld. Counsel for petitioner has argued if the evidence is minutely scrutinized, same would reveal that issuance of warning letter to petitioner on 24-7-2014 for violating Code 7 and Code 16 apparently revealed serious misconducts but no inquiry was conducted and contract of employment was not renewed **much before its expiry** *i.e.* on 4-8-2014 whereas contractual employment was to come end on 21.8.2104 and request of petitioner and reminder for renewal prior to last date of agreement of contract employment dated 21-8-2014 was neither acknowledged nor rejected. Be it noticed that in reply to claim, respondent No. 2 has nowhere alleged that pay of one months' notice period along-with other benefits was given to petitioner. Even information for non renewal of contractual appointment on 4-8-2014 was factually received by petitioner on 13-8-2014 for no plausible explanation. As and when letter for non-renewal was issued, contractual employment was in existence as such non-renewal of contractual **letter of appointment was not renewed after expiration and rather much before** which does not meet requirement of Section 2 (bb) (oo). Not only this, order of non-renewal of contract letter of appointment was manifestly punitive in nature as despite issuance of several appreciation letters in 2013 one of which was consequently published in magazine EMCARE of respondent No. 2 and one letter of appreciation letter of 2014 on record clearly established that nonrenewal was with malafide intention as result of complaint made by petitioner to Manager HR against his senior Gaurav Mehta who had himself misbehaved with petitioner and without conducting inquiry or raising charge-sheet for misconduct petitioner was issued warning letter for violation Code 7 and Code 16 which too was not in consonance with service record of petitioner. Thus, action of respondent No. 2 was not only inconsistent with service record of petitioner but it was punitive in nature falling within the ambit of **unfair labour practice** on part of respondent No. 2. For aforestated reason judgments relied by Ld. Counsel for respondent No.2 reported in **2007 AIR (SC) 288** titled as **Bhogpur Co-op Sugar Mills Ltd. vs. Harmesh Kumar 2006 (2) SCT 23 (SC)** would not attracted having different facts altogether.

29. The grievance of petitioner remains that letter dated 4-8-2014 Ex. PW1/B *qua* non-renewal of fixed term contractual employment was punitive in nature. In the letter aforestated reference of clause (2) has been made and thus it needs to be determined if due to non-renewal of contractual employment of petitioner, respondent violated rights of petitioner and decision to not renew contract was in violation of provisions of the Industrial Disputes Act. At the outset, it would

relevant to mention here that letter of appointment dated 22-8-2013 Ex. PW1/D was not signed by petitioner by accepting terms and conditions enumerated therein. Stepping into witness box, petitioner has sworn his affidavit Ex. PW1/A deposed on oath as maintained in the claim petition however in crosse-xamination by the respondent No.1, petitioner has admitted that emergency ambulance service which was earlier known as Atal Swasthya Seva later changed National Ambulance Service on which he worked and deployed as EMT. He has further admitted that neither respondent No.1 appointed him nor made any payment of salary etc. to him directly. In cross-examination by Ld. Counsel for respondent No. 2 petitioner has admitted that he was employed by respondent No.2 who the principal employer with regard to Ex. PW1/C appointment it has been stated that same was issued by respondent no.3. He has specifically admitted that petitioner was employed on contract for one year *vide* letter Ex. PW1/D which was to expire on 21-8-2014 although denied that contractual employment could be terminated by giving one month's notice. It is evident from oral as well as documentary evidence led by petitioner placed on record that *vide* letter dated 4-8-2014 Ex. PW1/K, the contract of employment was not renewed prior to it expiration on 21-8-2014. The plea of respondent No.2 remains that services of petitioner was not terminated prior to contractual period which was to expire on 21-8-2014 rather petitioner was notified in advance *qua* non-renewal of contractual employment. Although letter dated 4-8-2014 Ex. PW1/L qua non-renewal does not give details of Clause (2) of Annexure-A of appointment letter, as it has not been proved but the petitioner on the other hand led sufficient evidence establishing that the action of respondent No. 2 in non-renewal of contractual appointment was malafide fell within the definition of unfair labour practice with the object to harass the petitioner who rendered dedicated services to patients and general public as well as to respondent No. 2 and that the action of respondent No. 2 in giving only one months' notice was primarily in violation of agreement dated 9-7-2010 Ex. PW1/A-1 entered into between State of H.P. and respondent No. 2.

30. In this regard reliance has placed on Clause 1.1.1 which deal respondent No. 2 with autonomy and operational freedom to respondent No.2 under Clause 1.1.0 in sub-clause (a) and made it obligatory for two months notice while terminating his services and read as under:

> "**All employees of GVK EMRI HP will be appointed on Contract and the duration of the Contract (not more than five years) will be clearly mentioned so that there is no long term obligation for employment. The Contract with the employees shall be liable to be terminated by giving two months "notice by the either side".**

It can be noticed from the above stated provisions that being employee of respondent No. 2 in pursuance to agreement Ex. PW1/A-1 respondent No. 2 was under obligation to issue atleast **two month's notice** if service contract of petitioner was to be terminated. It can be safely inferred from the contents of said rule that employees of respondent No. 2 were to be appointed for period not exceeding five years on contract so that there is no long term obligation but certainly it was clearly mentioned that either parties could serve two months' notice to terminate contract of employment. As such, non-renewal of contractual employment of petitioner manifestly violated sub-clause 1.1.1 (a) Ex. PW1/A-1 aforestated. Thus, there is *prima facie* no explanation from the side of respondent No.2 and thus non issuance of notice of two months was in violation of agreement Ex. PW1/A-1. Cross-examination of Shri Daya Ram (RW2) the sole witness of respondent No. 2 is quite clear on this point as he admitted that petitioner could not be removed unless he was given two month's notice as per clause 1.1.1 of agreement Ex. PW1/A-1 which primarily support of plea of petitioner that he was not given required notice under the rule. This witness has also admitted that MOU Ex. PW1/A-1 was enforceable on 4-8-2014 when letter Ex. PW1/K *qua* non-renewal was issued to petitioner and there was sufficient budget although denied that petitioner was removed wrongly in violation of the rules. Significantly, this witness has also admitted that petitioner had requested *vide* letter Ex. PW1/C and PW1/M for renewal of contractual employment but there were neither acknowledged by respondent No. 2 nor rejected. It is nowhere stated that his request for renewal of

contract was either not considered or rejected which also showed malafide intention of respondent No. 2 besides unfair labour practice as provided in Section 2 (ra) read with Fifth Schedule appended to Industrial Disputes Act.

31. It is admitted case of the respondent No. 2 as well as respondent No.1 that petitioner was issued appreciation letters Ex. PW1/E to Ex. P W1/I, the certificates which revealed that these letters were given for exemplary performance by petitioner in providing pre-hospital care and extending contribution towards saving valuable lives of the patients. Significantly, petitioner's performance and appreciation was also reflected in their magazine EMCARE copy of which is Ex. PW1/J wherein performance of CH Team Kangra was appreciated in which ambulance EMT Anchal Goswami and pilot Sanjeev were present who had rescued patient having major cardiac arrest, chest pain and due to prompt service of petitioner, patient could be saved. It would be pertinent to mention here that letter Ex. PW1/K dated 4.8.2014 *qua* non-renewal fixed term contractual employment respondent No. 2 has merely invoked Clause (2) under annexure of appointment however letter stipulates nothing about his conduct or non performance of duties for violation of Code 7 and Code 16 of rules of respondent No.2. The case of the petitioner remains that warning letter dated 24-7-2014 Ex. PW1/N which had been issued *qua* violation of non attending calls, refusing to take case, call disconnecting as well as code Nos. 7 and 16 were not followed properly by petitioner are not at all established from any inquiry or legal evidence. The said letter was despatched on 2nd August, 2014 as is evident from postal receipt of Ex. PW1/O at the address of petitioner and while sending warning letter dated 27-7-2014 for violating Codes referred above apparently there was no explanation from the side of respondent No. 2 as to how the warning letter dated 24-7-2014 had remained pending or un-despatched in the office and was finally despatched on 2nd August, 2014 after 10 days which also shows malafide attitude of the respondent no.2. In the reply to Ex. PW1/P to warning letter, petitioner has raised serious allegations against Shri Gaurav Mehta who on 26-4-2014 had abused petitioner besides slapped him on duty and had threatened petitioner with dire consequences. Besides reply addressed to Manager, HR 108, GVK EMRI, Solan goes to show that petitioner had made complaint against Shri Gaurav Mehta while replying the warning letter. Not only this, petitioner in witness box has made similar disclosures in his affidavit and when examined by respondent No. 2 nothing could be elicited in cross-examination which would reflect that he was deposing falsely.

32. RW2 who is sole witness of respondent No. 2 when cross-examined by Ld. Counsel for petitioner has admitted that Ex. PW1/N was issued by respondent No. 2 *qua* Code Nos. 7 and 16 violated by petitioner but the same time he has admitted that in Ex.PW1/K dated 4-8-2014 letter for non-renewal of contractual employment there is no reference of violation of code Nos. 7 and 16. He has also admitted that Ex. PW1/L and Ex. PW1/N had been signed by same officer. Significantly, this witness also admits that while after Ex. PW1/N, respondent No. 2 had not conducted any inquiry. At the same time, he has supported plea of petitioner by admitting that petitioner had complained *vide* his letter dated 28-4-2014 Ex. RW1/C addressed to HR Manager GVK EMRI *qua* misconduct of Gaurav Mehta who had abused and slapped petitioner besides admitted that petitioner had raised voice against slapping by said Gaurav Mehta and his behaviour but no inquiry had been conducted. This witness has also supported the plea on the point of quality and performance of service rendered by petitioner as this witness has admitted in cross-examination that Ex. PW1/E to Ex. PW1/I were appreciation certificates were issued by respondent No. 2 besides after issuance of certificate Ex. PW1/E the name of petitioner had been reflected in magazine of EMCARE. Ex.PW1/J *qua* petitioner's excellent performance thus testimony of RW2 and admissions so made by him in cross-examination, it would be unsafe to hold that petitioner had not rendered service satisfactorily properly or violated Code Nos. 7 and 16 as reflected in the warning letter. At the same time, antedating warning letter 24-7-2014 which was despatched on 2nd August, 2014 also establishes malafide intention on the part of respondent No. 2. It appears that when petitioner raised his voice raising serious allegations against Gaurav Mehta *qua* his ill

behaviour on 28-4-2014 as discussed in foregoing paras, respondent No. 2 decided to make an excuse for removing petitioner under garb of issuance of warning letter which too was fabricated as previous service record of petitioner did not reveal so while not renewing besides petitioner has been condemned unheard *qua* story of violation of Code Nos. 7 and 16 and also incident of April, 2014 when petitioner was slapped and abused by his Senior Officer thus by making false warning letter dated Ex. PW1/N dated 24-7-2014 contract of employment was not renewed prior to its expiration on 31-8-2014 which is also in violation of Section 2(oo) (bb) of Industrial Disputes Act.

33. Sub-Section 2 (ra) deals with "unfair labour practice" which in stipulates unfair labour practice means any of the practices specified in the Fifth Schedule of Industrial Disputes Act, 1947. Rule 5 of Fifth Schedule provided any of acts stipulated in rule would be unfair labour practice particularly **if the employer discharges** or **dismisses** the workman:

(a) by way of victimization

(b) not in good faith but in the colourable exercise of the employer's rights N.P. Ld. Counsel for the petitioner has contended with vehemence that nonrenewal of contractual employment fell within the ambit of unfair labour practice and action of respondent No. 2 in not initiating inquiry against Gaurav Mehta as stated in foregoing paras showed prejudices of employer against petitioner which cannot be stated be made in good faith as petitioner had rendered exceptionally good services for which even certificates were issued by respondent No. 2 and thus letter dated 4.8.2014 *qua* non-renewal of contractual employment of petitioner without referring to violation of code Nos. 7 and 16 as referred warning letter Ex. PW1/N and without conducting inquiry or raising charge-sheet for violating of Code Nos. 7 and 16 was manifestly illegal. At the cost of repetition, it may be stated that the issuance of warning letter which was not served to petitioner immediately rather it was despatched on his address on 2nd August, 2014 per registered postal receipt on record after gap of ten days and subsequently on 4-8-2013, contractual employment was not renewed which was received by petitioner on 13-8-2014. By doing so respondent No. 2 had deliberately victimized the petitioner with the object to terminate him from contractual employment and at the same time, but it was in colourable exercise of employer's right as provided in Clause (b) of Rule 5 stated above as no inquiry was conducted at any stage and petitioner had been condemned unheard throughout in violation of principles of natural justice and had to pay price for raising voice against his Senior Officer with Manager HR as has come in the evidence. No corresponding evidence on record has been produced by respondent No. 2 which would establish that petitioner had violated the code nos. 7 and 16 and by making reference of it in warning letter which was not sufficient to infer that petitioner had factually committed any misconduct in violating any code and thus issuing warning letter primarily appears to be not true and thus respondent no.2 is held to have committed unfair labour practice within the meaning of Section 2 (ra) of the Fifth Schedule of Industrial Disputes Act.

34. Another aspect of the matter which could not be lost sight while appreciating petitioner's evidence *qua* contractual employment and non-renewal by respondent No. 2 is that despite petitioner's repeated requests *vide* two letters Ex. PW1/L dated 14-8-2014 and Ex. PW1/M dated 20-8-2014 on record written before the expiry *i.e.* 21st August, 2014 of contractual employed had remained unanswered or say unacknowledged. Be it stated petitioner had also moved before the Hon'ble High Court of H.P in year 2014 filing CWP No. 6406/2014 copy of which is Ex. PW1/Q enclosed with order of Hon'ble High Court dated 9-4-2015 besides the petition of present petitioner was clubbed with CWP No.1583/2014 titled as **H.P.108 Contract Workers Union vs. State of H.P. and Ors.** in which the Hon'ble High Court of H.P had directed the respondents to **not**

terminate the services of petitioner and others who had not completed their contractual period. The operative portion of the order also shows that employer were also directed that in case fresh hands were engaged, the petitioners shall be given preference as per provisions of Section 25-H of the Industrial Disputes Act. Consequently, after passing this order, respondent No. 2 had appointed 82 EMTs *w.e.* f 1-8-2014 to 12-9-2015 Ex. PW1/V details of which has been obtained by petitioner under the RTI Act. Thus, evidence goes to show that respondent No. 2 had not adhered to mandate of Hon'ble High Court as firstly the contractual employment of petitioner which was in existence till 21st August, 2014 was factually terminated on 4-8-2014 much before its expiration. Significantly, despite engagement of fresh hands present petitioner had not been given preference by giving offer of appointment as per provisions of Section 25-H of the Industrial Disputes Act. On this point, pleadings of respondent No. 2 are quite material which would throw sufficient light in the manner respondent No. 2 had ignored the mandate of the order of Hon'ble High Court of H.P for terminating letter of appointment dated 22-8-2013 for one year which was to expire on 21-8-2014 whereas non-renewal was informed *vide* letter dated 4.8.2014 and at the same time salary of one month as notice period was given as reflected in Mark-B. In said reply to claim petition, respondent had stated in para No.12 admitting that Hon'ble High Court had directed *vide* order dated 9.4.2015 not to terminate the services of claimant/petitioner who had not completed contractual period however in para 13 of reply it is stated that service of petitioner had been terminated after expiry of contractual period not in between or before its expiration. Above stated pleadings in reply of respondent No. 2 are manifestly false as non-renewal was notified *vide* letter dated 4-8-2014 whereas contractual appointment of petitioner was to expire on 21-8-2014. It was admitted that Hon'ble High Court had also ordered in case fresh hands were engaged, claimant/petitioner shall be given preference as per Section 25-H of the Industrial Disputes Act. To meet the situation, respondent No. 2 has alleged that several posts of EMTs as well as interviews were notified in local newspaper in State of H.P. but claimant/petitioner who was employee with respondent No. 2 did not appear for interview and even the present claimant/petitioner never applied or appeared at the time of interview when new persons/fresh hands had been engaged. On this aspect, Section 25-H needs to be referred which provides that an opportunity was to be given to the terminated employee while offering jobs to new recruits. In this case, local newspaper where the posts advertised by respondent No. 2 was not produced in evidence but in such like situation petitioner under Section 25-H of Industrial Disputes Act could be intimated through a notice in writing by sending registered letter offering petitioner to work as EMT with respondent No. 2 as before which has admittedly not been done establishing under the garb of interviews in local newspapers which too had not been proved on record, respondent No. 2 had selected 82 EMTs and for said reason the respondent No. 2 is held to have not followed mandate of order of Hon'ble High Court in its letter and spirit, invading rights of petitioner under Section 25-H of the Industrial Disputes Act as well. Be it stated that respondent No. 2 has also relied upon Mark-B which had been put to petitioner in cross-examination by Ld. Counsel for respondent No. 2 showing that petitioner had been given **one month's salary as the notice period** but factually respondent No. 2 was required to issue **two months** notice or salary in lieu thereof but plea of respondent No. 2 in pleadings show that infact contract of employment was not renewed and therefore it could not be inferred that any notice period or salary in lieu thereof was given to petitioner. As such, respondent No. 2 had nowhere alleged that petitioner was given one month's salary in lieu of notice was under obligation to issue notice of two months as per MOU Ex. PW1/A-1 signed between State of H.P. and respondent No. 2 if contractual employment of petitioner was to be terminated. In such like situation, it may not be erroneous to state that plea of respondent No. 2 is inconsistent as on one hand it talks about non-renewal of contractual appointment which too was not after expiry but before expiry and on the other hand claims to have issued notice of one month's as reflected Mark-'B' its document showed that respondent No. 2 had paid one month's salary in lieu of notice for the month of August, 2014. As such, the act and conduct of respondent No. 2 as discussed above entitles petitioner reinstatement in service on the same terms and conditions on which petitioner was rendering service before. Since petitioner had neither alleged in claim petition nor led evidence

that he had remained unemployed after removal from service, petitioner could not at all be awarded back wages. In view of aforegoing discussions, issue No.1 is decided as stated above whereas issue No. 2 is answered holding that petitioner is liable to be reinstated in service forthwith and issue No.7 is answered in negative in favour of petitioner for the reason as discussed in foregoing paras of award.

Issue Nos. 3 And 5:

35. Ld. Counsel for the respondent No. 2 has argued that claim petition is not maintainable. As has been discussed in foregoing paras that petitioner had been removed in violation of agreement Ex. PW1/A-1 between State of H. P. and respondent No. 2 as notice of two months or two months salary was not paid to petitioner. Thus, action of respondent No. 2 in terminating the services of petitioner was with malafide object and the petitioner being aggrieved with the act of the respondent No. 2 could legitimately raise industrial dispute as has also been observed by Hon'ble High Court in order dated 9-4-2015 Ex. PW1/Q. In so far as objection of respondent Nos. 1 and 3 are concerned suffice would be state here that respondent No. 3 is no more in dispute with petitioner or respondent No. 2 as agreement dated 10-8-2013 with respondent No. 2 had come to an end after three years in August, 2013 and period in which petitioner was terminated from service was on 4.8.2014 as earlier letter of appointment dated 22-8-2013 was issued by respondent No. 2. In so far objection of respondent No.1 that petition was not maintainable against it as respondent no.1 was not Principal Employer of petitioner, there is definite findings in foregoing paras of award that respondent No.1 was not Principal Employer as infact respondent No.2 was Principal Employer when petitioner was appointed on 22-8-2013 and contractual appointment was not renewed in 2014. Issue No. 3 is answered negative and in favour of petitioner to that extent and against respondent No.2 however in affirmative against respondent Nos. 1 and 3 as stated above. In view of foregoing discussion issue No.3 is answered in negative in favour of petitioner and against the respondent No.2.

Issue Nos. 4, 6 8 and 9

36. All these issues were not pressed by Ld. Counsel for respondent Nos. 2 and 3. As such, these issues are decided as unpressed in favour of the petitioner and against the respondent No. 2 and 3. Be it stated that onus of proof on these issues were of respondent Nos. 2 and 3. Accordingly, issue No.4, 6, 8 and 9 are decided in negative in favour of petitioner and against the respondent No. 2 and 3.

RELIEF

37. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. Accordingly, the respondent No. 2 is hereby directed to re-engage the petitioner forthwith with on same terms and conditions as before **except back wages** besides that respondent No. 2 shall pay Rs.10,000/- to the petitioner as litigation costs. However, the claim petition against respondent Nos. 1 and 3 is dismissed with no orders as to costs.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of October, 2017.

Sd/-
(K.K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K .K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 139/2013
Date of Institution : 09-09-2013
Date of Decision : 09-10-2017

Shri Prem Chand s/o Shri Mahant Ram, r/o Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer Himachal Pradesh State Electricity Board, Division Dharampur, District Mandi, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vinesh Dhiman, Adv.

For the Respondent : Sh. B.K. Sood, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Prem Chand son of Sh. Mahant Ram, resident of Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. by The Executive Engineer, Himachal Pradesh State Electricity Board, Division Dharampur, Distt. Mandi (H.P.) *w.e.f.* 21-7-1998 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged as beldar/daily wager by respondent No.1 in Sub Division Dharampur on muster-roll basis in April 1993 whose job continued till June 1993 who was again engaged in the month of June 1993 till

March 1994. After that for one month and thereafter for three months when his services were terminated as there existed no post of labourer in Division Sarkaghat however if future vacancy arose, the petitioner would be engaged again. Averments made in the claim petition further revealed that petitioner had been again engaged on 26-5-1998 when he continued to work upto 20th July, 1998 and on 21st July, 1998 the service of petitioner had been orally terminated by respondent without following mandatory provisions envisaged under Industrial Disputes Act as well as in violation of respondent's own Standing Orders. It further revealed that petitioner had worked with respondent more than 18 months whose services had been terminated in violation of provisions of Sections 25-G, 25-H and 25-N of the Industrial Disputes Act and as such the impugned order *qua* termination was in violation of mandatory provisions. The grievance of the petitioner also remains that several workers junior to the petitioner namely Trilok Chand s/o Rikhi Ram, Ajeet Singh s/o Bidhi Singh, Dharm Chand s/o Sh. Shankar Dass, Dharam Chand s/o Bhagat Ram, Kashmir Singh s/o Sobha Ram, Sh. Sohan Singh s/o Ram Dass had been retained in service whereas petitioner was disengaged from his service and despite request for employing him again followed by a legal notice to respondent No.1 to allow him to join duty but in vain. It is also alleged that the services of petitioner had been deliberately interrupted by giving fictional breaks on account of alleged cessation of work in order to stop the petitioner to complete 240 days in a calendar year. Accordingly, it is also alleged that as per provisions contained in Standing Orders the workers who had not completed 240 days are required to be given 10 days notice for retrenchment which had not been done by the respondent. As such, respondent is stated to have retrenched the service of the petitioner without prior notice as stated above and at the same time no retrenchment compensation had been given to him. Accordingly, petitioner prays to declare order of termination of the services of petitioner *null and void* with further prayer for consequential relief and all the other allowances such as back wages, seniority, past service benefits and compensation alongwith interest and to other relief, petitioner is found entitle.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, cause of action. On merits denied that petitioner had been engaged in Dharampur Sub Division but petitioner had been engaged in Sub Division Tihra which at the time was within domain of Electrical Division Sarkaghat. While referring to mandays chart in para No.1 of reply respondent has specifically alleged that petitioner had worked for 15 days from 6-9-93 to 20-9-93 for which muster-roll No. 427/93 had been issued, 30 days from 21-9-93 to 20-10-93 on muster roll No. 434/93, 31 days from 21-10-93 to 20-11-93 for which muster roll No.504/93 had been issued, 6 days from 21-11-93 to 20-12-93 for which muster-roll No. 599/93 had been issued, 25 days from 26-5-98 to 20-6-98 under muster-roll No. 39/98 and 22 days from 21-6-98 to 20-7-98 for which muster-roll No. 41/98 had been issued. Thus respondent has admitted to have engaged petitioner as detailed in para No.1 of the reply but denied that persons whose names are mentioned in para No. 2 were junior to petitioner besides emphasized that petitioner had himself left/abandoned his job and therefore he could not have been compelled to join the service and therefore it could not be stated that provisions of Sections 25-G, 25-H and 25-N had been violated. It is also asserted that claim petition is not within limitation which has been filed with the object of to harass the replying respondent. It is also alleged that once petitioner himself abandoned the job, then no question arises to stop the petitioner to complete 240 days. It is also emphasized that provisions of Sections stated above under the Industrial Disputes Act could be attracted only when the services of petitioner had been terminated rather petitioner is stated to have abandoned the job. The respondent while contesting the claim petition had also referred to decision dated 18-12-2012 in pursuance to which Hon'ble High Court of H.P. on the basis of CWP No. 9440/12 titled as Bilu Ram *vs*. State of H.P. in which respondent has asserted its stand that respondent was not making any fresh recruitment. It further remains the case of respondent that there is no requirement of additional manpower with the respondent board and therefore in view of decision taken in letter dated 18-12-2012 did not require reengagement of the petitioner moreso when petition is stated to

be hopelessly time barred as reference has been made after lapse of 15 years from last employment of petitioner on 20-7-1998. Accordingly, petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, PW2 Sh. Gian Chand, PW3 Sh. Roop Lal, PW4 Sh. Ravi Kumar, PW5 Sh. Kamlesh Kumar, tendered/proved their affidavits Ex. PW1/A, PW2/A, PW3/A, PW4/A and PW5/A under Order 18 Rule 4 CPC, copy of seniority list Mark-A, copy of letter issued to the Labour Officer, Mandi Mark-B, copy of working days of daily waged workers Mark-C, copy of letter dated 25-9-2007 Mark-D, copy of letter dated nil regarding reinstatement on the post of daily wager Mark-E, copy of legal notice dated 21.7.1998 Mark-F, copy of legal notice dated 22-7-1998 Mark-G, copy of legal notice dated nil Mark-H, Copy of muster-rolls Ex. C1 to C7, copy of RTI letter dated 24-6-2016 Ex. P1, copy of muster-roll Ex. P2, copy of service particulars of electrical Beldar Ex. P3 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sant Ram, Sr. Executive Engineer, Electrical Division, Dharampur, HPSEB Ltd. as RW1 tendered/proved his affidavit Ex. RW1/A and closed the evidence. Therefore petitioner had moved an application under Rule 15 of the Industrial Disputes Act, 1947 read with Section 151 CPC for leading additional evidence which was allowed by this Court on 8-4-2016 in pursuance to which petitioner had led additional evidence examined PW4 Sh. Ravi Kumar, Junior Assistant O/o Electrical Sub Division Tihra, HPSEB, Tehsil Sarkaghat, District Mandi, H.P. tendered/proved copy of muster roll Ex. C1 to C7. PW5 Sh. Kamlesh Kumar Gautam, Addl. Asstt. Engineer O/o SEE, Electrical Division HPSEB, Tehsil Sarkaghat, District Mandi, H.P. tendered/proved Ex.P1 to Ex. P3 and closed evidence. Respondent however, did not lead any additional evidence as is evident from statement recorded on 05-11-2016.

7. I have heard the Ld. Counsel of petitioner and Ld. Counsel representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 01-3-2014 for determination:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 21-7-1998 is/was illegal and unjustified as alleged? ..*OPP.*

2. Whether the petitioner has a cause of action? ..*OPP.*

3. Whether the claim petition is not maintainable in the present form? ..*OPR.*

4. Relief.

9. For the reasons detailed hereunder, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No. 2 : Discussed

Issue No.3 : No

Relief : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No .1 To 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent in its reply has specifically admitted in para No.1 of claim petition that petitioner had worked for 129 days in all 15 days, 30 days, 31 days, 6 days as against muster roll no.427/93, 434/93, 504/93, 599/93 and 25 days and 22 days as against muster-rolls No. 39/98 and 41/98 which showed that petitioner had factually not worked for 240 days. The case of respondent also remains that petitioner had worked under Sub Division Tihra which at that time was under the territorial jurisdiction of Electrical Sub Division Sarkagaht however Sub Division Dharampur was created in the year 2000 as per evidence on record. Although, respondent in its reply had admitted that petitioner was engaged in Sub Division Tihra which was under Electrical Division Sarkaghat but the claim of the petitioner also remains that he had worked for more than 240 days contrary to allegation of respondent in para No.1 of reply but documentary evidence does not support the plea of petitioner for having worked for 240 days. It also remains the case of petitioner that fictional breaks had been given in service deliberately by the respondent in violation of the Section 25-B of the Act but again there is no corresponding evidence to establish this plea of petitioner. Enough has been emphasized by Ld. Counsel for respondent that petitioner had worked in Tihra Sub Division whereas he had claimed that he had been engaged for the first time in April, 1993 in Sub Division Dharampur which was not existence in the year 2000. To appreciate evidence in this regard, it would be relevant to go through testimony of RW1 Shri S.R. Garg, Sr. Executive Engineer, Electrical Division Dharampur in which he has specifically admitted that petitioner had worked initially Tihra Sub Division and Dharampur Sub Division was created in 2000 which also fell within Electrical Division Sarkaghat. Since all these Sub Divisions fell under Electrical Division Sarkaghat, it could be inferred that Sub Division Tihra which was in existence prior to Dharampur Sub Division was the place of work of petitioner but while filing claim petition, petitioner had confined his claim as against Sub Division Sarkaghat. The factual matrix of the case remains that petitioner had worked in Tihra Sub Division as per the reply filed by the respondents. Thus, when both the Divisions were under same Electrical Division Sarkaghat, the error in not knowing the Division by petitioner who himself is illiterate person about place where he was factually first engaged does not make his case false particularly when respondent has admitted him to be employee of respondent moreover when Sub Division Tihra fell under Electrical Division Sarkagaht as Sub Division Dharampur also fell under the Electrical Division Sarkaghat. Be it stated that respondent in its reply as well as evidence has not clarified if Sub Division Tihra was under Sub Division Dharampur at any point of time when in the year 2000 it was created. Thus, evidence goes in favour of petitioner and petitioner could not be dislodged merely on the basis of his claim confined to Dharampur Sub Division and error to this could be on account of his illiteracy and lack of knowledge. Certainly, per evidence on record adduced by both the parties, petitioner had failed to prove that he had factually worked for continuously 240 days prior his alleged illegal oral termination of service and testimony of petitioner to this extent to have worked for 240 days prior to his illegal termination merits rejection and this Court is left with no option but to hold that respondent had not violated the provisions of Section 25-F of the Industrial Disputes Act because petitioner has not completed 240 days preceding his date of termination.

12. Ld. Counsel for the respondent at the time of arguments emphasized that petitioner had abandoned the job and therefore no question of termination of services requiring issuance of notice either under the Standing Rules or under the provisions of Section 25-F of the Industrial Disputes Act. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection

in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued to him calling upon to join duty. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner whenever he absented from duty. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service which *prima facie* belies stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work which entitled him benefit of Section 25-B of the Act. In view of foregoing plea of respondent that petitioner had abandoned the job and therefore did not require issuance of notice is fallacious when specific evidence has not been led by the respondent *qua* abandonment of job by petitioner and respondent to issue notice under the Standing Orders as well as provisions of Section 25-F of the industrial Disputes Act. As such, the respondent could not derive any benefit from pleas of abandonment of job by the petitioner. In any case the respondent would also not derive any benefits from respondent having failed to establish plea of abandonment as there is no authenticated evidence establishing that petitioner had worked 240 days at any time as required under law. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

13. In so far as violation of provisions of Section 25-G of the Industrial Disputes Act is concerned from Standing Order of the Himachal Pradesh State Electricity Board, it would be relevant to go through documentary evidence on record adduced by petitioner. Ld. Counsel for petitioner as per Ex. P1 tentative seniority list of T/mate (W/C), as it stood on 1-1-2010 in respect of Electrical Division, HPSEB, Dharampur which showed that S/Sh. Trilok Chand, Ajeet Singh, Shakti Chand and Dharam Chand were posted in ESD Sandhole and were working temporarily who had joined on 20-11-2002 and 19-1-2007 respectively. As per Ex. P2 petitioner is shown at serial No.10 when muster-roll dated 8-4-1993 was issued. Ex. P3 is the seniority list of Electrical Beldar (daily wages) under Electrical Division HPSEB, Sarkaghat ending on 30th April, 1996. This list is spread over in six pages in which Beldar/daily wagers who had been engaged from 1981 till 1994 have been shown. In the year 1992 Balbir Chand and Shakuntla Devi are shown to have joined in 1992 and thereafter no one has been shown to have been engaged in 1993 the year in which present petitioner and his two other colleague workers whose service were terminated were not shown. Thereafter, in the year 1994, three persons Shambu Ram, Prem Raj and Amar Singh are shown to have appointed or engaged. Thus, this document *prima facie* substantiate the plea of petitioner qua non inclusion of name of present claim petitioner and two others Hari Chand and Hem Singh in the seniority list Ex. P3. Thus, names of present petitioner had not been included in the list of employees engaged as Electrical Beldar (daily wages) engagement between 1981 till 1994. Mark-A is the provisional seniority list of daily wages Beldar working under Electrical Division Sarkaghat as on 01-4-2001 which shows engagement of Trilok Chand in 1993, Ajeet Singh in 1994, Dharam Chand in 1996, Dharam Pal in 1996 and Kashmir Singh in 1996. Said Trilok Chand is shown to have been appointed on 13-10-1993 whereas present claim petitioner had been engaged in April, 1993. Exts. C1, C2, C3, C4, C5, C6 and C7 are the muster-rolls showing engagement of petitioner. As such, per documentary evidence it is established that petitioner had been engaged in April 1993 and not in September, 1993 as claimed by respondent and one Trilok Chand shown in Ex. P1 had worked with petitioner who was engaged much later *i.e.* in October 1993 but name of petitioner and two other who joined 1993 was not reflected. Ex. P1 although shows Trilok Chand had been engaged temporarily on 2-11-2002 but claim of petitioner is not falsified more particularly in view of evasive reply of RW1 who has shown ignorance if Trilok Chand was engaged on 2-11-2002 and

petitioner was engaged at the same time. Significantly, RW1 admitted that petitioner had issued legal notice Mark-F to Sarkaghat Division but the respondent/board had not given any reply. As the contents of notice were not proved in view of the fact that said document has not been exhibited but answer of RW1 who has admitted issuance of notice by petitioner has to be interpreted in favour of the petitioner to the extent that certainly notice was given when the services of petitioner had been terminated in the year 1998 as admitted by RW1 and that notice had remained un-replied.

14. PW4 Ravi Kumar, Junior Assistant in the office of Electrical Sub Division Tihra, HPSEB has deposed that he had not brought any seniority list of daily casual labourers although proved muster -olls Ex. C1 to C7. It is specifically stated that no seniority list was prepared. PW5 Sh. Kamlesh Kumar, Addl. Engineer in the office of SEE, Electrical Division HPSEB, Sarkaghat has stated to have not brought any seniority list although PW4 proved muster-rolls. He has specifically stated that as per the record, there is no seniority list of casual labourers who are merely issued casual cards. Cross-examinations of these witnesses of respondent examined by petitioner revealed that petitioner had remained posted under Sarkaghat Division prior to September 2009. As such, from testimony of PWs no seniority list was prepared makes stand of respondent for having not prepared seniority list gets falsified as petitioner in his claim has tendered tentative seniority list as reflected in Ex. P1 obtained by petitioner under RTI Act. In view of the testimonies of the officials of the HPSEB, it is also established that no seniority list was prepared although list Ex. P3 was prepared which did not relate to the present claim petition particularly when name of petitioner was not included. Since name of the petitioner was not reflected in the list which was of beldar/daily wages as on 30-4-1996 it shows that the name of petitioner was deliberately not included to defeat his claim and at the same time it has been pointed out by the official that no seniority list was prepared. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPSEB which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had not abandoned the job by not reporting for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be applied in facts and circumstances of this case. Be it noticed that there is sufficient reliable evidence on record that after termination of service of petitioner, several new juniors had joined.

15. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble H.P. High Court reported in **Latest HLJ 2012 (HP) 591** titled as **Secretary, HPSEB, Kumar House, Shimla and Anr.** vs. **Sh. Piar Chand and Anr.**, the relevant para of the judgment is reproduced below for reference:—

> "Industrial Disputes Act, 1947-Section 25-G read with clause 14(2) of the Certified Standing Orders Reinstatement. Dispensing with the service when illegal-oral removal illegal-Respondent engaged as Beldar-He had not completed 240 days in calendar year-His services would not be dispensed with orally as per standing order-10 days notice required-The court below correctly appreciated the fact and law laid down".

16. It can be safely observed from the above judgment that under Section 25-G read with Clause 14(2) Certified Standing Orders, the services of the petitioner could not be dispensed with by removal by oral order. As the respondent in the case before Hon'ble High Court had not completed 240 days in a calendar year however the services could not be dispensed with as per

Certified Standing Orders as it was required that petitioner should have been serves 10 days notice under Clause 14(2) of Certified Standing Orders. Applying the ratio of the above said judgment, it may not be erroneous to hold that petitioner had not served any notice although he was engaged and disengaged twice in the year 1993 as well as in 1998. As such, the action of respondents in not complying with the mandate of above-said provisions clearly vitiate termination of the services of petitioner as has been held in judgment (2012) *supra*. As has come in the evidence that respondent has admitted that petitioner was engaged as labourer on different dates as enumerated in para No.1 of reply, it would not be material fact it had inadvertently alleged that he had been engaged in either Sub Division Tihra or Sub Division Dharampur which certainly fell under Electrical Division Sarkaghat. Ld. Counsel for the respondent has emphasized that once the petitioner has failed to establish that he had worked under Dharampur initially the same is fatal to case of petitioner but respondent had admitted engagement of petitioner several times as stated in foregoing paras, it could not be stated that claim of petitioner is false but due to petitioner's having worked under Electrical Division Sarkaghat, he was employee/worker of respondent and his services were illegally terminated by the respondent without following the provisions of Section 25-G of the Industrial Disputes Act as well Certified Standing Orders of the respondent which required respondent to issue notice of 10 days.

17. Ld. Counsel for respondent has vehemently contended that petitioner was out of employment from 20-7-1998 and the reference by Labour Commissioner had been made after lapse of 15 years. As such, claim for reengagement is stated be patently time barred moreover there is also decision as enumerated in para No.5 of reply which showed regarding decision was taken on 18-12-2012 and the same was placed before the Hon'ble High Court in pursuance to order of Hon'ble High Court, be it stated that respondent had not filed copy of order. As such, the policy concerning reengagement could not be looked as against the claim of petitioner however in so far delay in filing of claim petition it relevant to go through reference No.140/2013 received from Labour Commissioner, Govt. of Himachal Pradesh in the month of August, 2013 which shows that petitioner raised demand on 28-7-2004 regarding his illegal termination from service by the Executive Engineer when matter was referred to Labour Officer-cum-Conciliation Officer, Mandi, H.P. who submitted his failure report and the Labour Commissioner rejected the claim for making reference vide order dated 17-8-2006. In pursuance to which CWP No.76/2008 which was decided on 26-7-2013 vide which plea of petitioner was accepted quashing the order dated 17-8-2006 directing the Labour Commissioner to make reference to Industrial Tribunal in accordance with law. Therefore reference was made under the provisions of Industrial Disputes Act which was received on 29-8-2013. As such, petitioner has issued demand notice after his termination in the year 1998 after gap of six years. A period of two years has been taken in proceedings before the Labour Officer-*cum*-Conciliation Officer, Mandi who submitted failure report and Labour Commissioner declined to make reference which was challenged after two years although petitioner had remained litigating at different stages but had sufficient explanation for non issuance of demand notice immediately when his services were terminated in the year 1998. As such, the reference received from the Labour Commissioner shows that petitioner had issued demand notice on 28-7-2004 after gap of above six years. As such, there is unexplained delay as per law laid down in the **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** however the Hon'ble Apex Court held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. counsel has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

19. Repudiating the arguments by Ld. Counsel for the respondents, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrative in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Counsel for respondents on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra,*** claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex**

Court Judgment 652 (SC) similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement.

20. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to be kept in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 129 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years**. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through aforestated judgments relied upon by petitioner which are not applicable in this present case as this court has not declined relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** (*supra*). In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within **four months** from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt

of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of October, 2017.

Sd/-
(K. K. Sharma),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 140/2013
Date of Institution : 09-09-2013
Date of Decision : 09-10-2017

Shri Hem Singh s/o Shri Bhutoo Ram, r/o Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. …*Petitioner.*

Versus

The Executive Engineer Himachal Pradesh State Electricity Board, Division Dharampur, District Mandi, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vinesh Dhiman, Adv.

For the Respondent : Sh. B.K. Sood, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the termination of the services of Shri. Hem Singh s/o Shri Bhutoo Ram, resident of Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. by The Executive Engineer, Himachal Pradesh State Electricity Board, Division Dharampur, Distt. Mandi, (H.P.) *w.e.f.* 21-7-1998 without complying the provisions of the Industrial Disputes Act,

1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged as Beldar/daily wager by respondent No.1 in Sub Division Dharampur on muster-roll basis in April 1993 whose job continued till June, 1993 who was again engaged in the month of June 1993 till March, 1994. After that for one month and thereafter for three months when his services were terminated as there existed no post of labourer in Division Sarkaghat however if future vacancy arose, the petitioner would be engaged again. Averments made in the claim petition further revealed that petitioner had been again engaged on 26-5-1998 when he continued to work upto 20th July, 1998 and on 21st July, 1998 the service of petitioner had been orally terminated by respondent without following mandatory provisions envisaged under Industrial Disputes Act as well as in violation of respondent's own Standing Orders. It further revealed that petitioner had worked with respondent more than 18 months whose services had been terminated in violation of provisions of Sections 25-G, 25-H and 25-N of the Industrial Disputes Act and as such the impugned order *qua* termination was in violation of mandatory provisions. The grievance of the petitioner also remains that several workers junior to the petitioner namely Trilok Chand s/o Rikhi Ram, Ajeet Singh s/o Bidhi Singh, Dharm Chand s/o Sh. Shankar Dass, Dharam Chand s/o Bhagat Ram, Kashmir Singh s/o Sobha Ram, Sh. Sohan singh s/o Ram Dass had been retained in service whereas petitioner was disengaged from his service and despite request for employing him again followed by a legal notice to respondent No.1 to allow him to join duty but in vain. It is also alleged that the services of petitioner had been deliberately interrupted by giving fictional breaks on account of alleged cessation of work in order to stop the petitioner to complete 240 days in a calendar year. Accordingly, it is also alleged that as per provisions contained in Standing Orders the workers who had not completed 240 days are required to be given 10 days notice for retrenchment which had not been done by the respondent. As such, respondent is stated to have retrenched the service of the petitioner without prior notice as stated above and at the same time no retrenchment compensation had been given to him. Accordingly, petitioner prays to declare order of termination of the services of petitioner *null* and *void* with further prayer for consequential relief and all the other allowances such as back wages, seniority, past service benefits and compensation alongwith interest and to other relief, petitioner is found entitle.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, cause of action. On merits denied that petitioner had been engaged in Dharampur Sub Division but petitioner had been engaged in Sub Division Tihra which at the time was within domain of Electrical Division Sarkaghat. While referring to mandays chart in para No.1 of reply respondent has specifically alleged that petitioner had worked for 15 days from 6-9-93 to 20-9-93 for which muster-roll No.427/93 had been issued, 30 days from 21-9-93 to 20-10-93 on muster roll no.434/93, 31 days from 21-10-93 to 20-11-93 for which muster-roll No.504/93 had been issued, 10 days from 21-11-93 to 20-12-93 for which muster-roll No.599/93 had been issued, 25 days from 26-5-98 to 20-6-98 under muster-roll No. 39/98 and 22 days from 21-6-98 to 20-7-98 for which muster-roll No.41/98 had been issued. Thus respondent has admitted to have engaged petitioner as detailed in para no.1 of the reply but denied that persons whose names are mentioned in para No.2 were junior to petitioner besides emphasized that petitioner had himself left/ abandoned his job and therefore he could not have been compelled to join the service and therefore it could not be stated that provisions of Sections 25-G, 25-H and 25-N had been violated. It is also asserted that claim petition is not within limitation which has been filed with the object of to harass the replying respondent. It is also alleged that once petitioner himself abandoned the job, then no

question arises to stop the petitioner to complete 240 days. It is also emphasized that provisions of Sections stated above under the Industrial Disputes Act could be attracted only when the services of petitioner had been terminated rather petitioner is stated to have abandoned the job. The respondent while contesting the claim petition had also referred to decision dated 18-12-2012 in pursuance to which Hon'be High Court of H.P. on the basis of CWP No. 9440/12 titled as Bilu Ram *vs.* State of H.P. in which respondent has asserted its stand that respondent was not making any fresh recruitment. It further remains the case of respondent that there is no requirement of additional manpower with the respondent board and therefore in view of decision taken in letter dated 18-12-2012 did not require reengagement of the petitioner moreso when petition is stated to be hopelessly time barred as reference has been made after lapse of 15 years from last employment of petitioner on 20-7-1998. Accordingly, petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, PW2 Sh. Gian Chand, PW3 Sh. Roop Lal, PW4 Sh. Ravi Kumar, PW5 Sh. Kamlesh Kumar, tendered/proved their affidavits Ex. PW1/A, PW2/A, PW3/A, PW4/A and PW5/A under Order 18 Rule 4 CPC, copy of seniority list Mark-A, copy of letter issued to the Labour Officer, Mandi Mark-B, copy of working days of daily waged workers Mark-C, copy of letter dated 25-9-2007 Mark-A, copy of letter dated nil regarding reinstatement on the post of daily wager Mark-E, copy of legal notice dated 21.7.1998 Mark-F, copy of legal notice dated 22-7-1998 Mark-G, copy of legal notice dated nil Mark-H, Copy of muster-rolls Ex. C1 to C7, copy of RTI letter dated 24-6-2016 Ex. P1, copy of muster roll Ex. P2, copy of service particulars of electrical Beldar Ex. P3 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sant Ram, Sr. Executive Engineer, Electrical Division, Dharampur, HPSEB Ltd. as RW1 tendered/proved his affidavit Ex. RW1/A and closed the evidence. Therefore petitioner had moved an application under Rule 15 of the Industrial Disputes Act, 1947 read with Section 151 CPC for leading additional evidence which was allowed by this Court on 8-4-2016 in pursuance to which petitioner had led additional evidence examined PW4 Sh. Ravi Kumar, Junior Assistant O/o Electrical Sub Division Tihra, HPSEB, Tehsil Sarkaghat, District Mandi, H.P. tendered/proved copy of muster-roll Ex. C1 to C7. PW5 Sh. Kamlesh Kumar Gautam, Addl. Asstt. Engineer o/o SEE, Electrical Division HPSEB, Tehsil Sarkaghat, District Mandi, H.P. tendered/proved Ex.P1 to Ex. P3 and closed evidence. Respondent however, did not lead any additional evidence as is evident from statement record on 05-11-2016.

7. I have heard the ld. counsel of petitioner and Ld. Counsel representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 01-3-2014 for determination:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 21-7-1998 is/was illegal and unjustified as alleged? ...*OPP.*

2. Whether the petitioner has a cause of action? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form? ...*OPR.*

4. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Discussed

Issue No.3 : No

Relief. : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent in its reply has specifically admitted in para No.1 of claim petition that petitioner had worked for 133 days in all 15 days, 30 days, 31 days, 10 days as against muster roll no.427/93, 434/93, 504/93, 599/93 and 25 days and 22 days as against muster-rolls No. 39/98 and 41/98 which showed that petitioner had factually not worked for 240 days. The case of respondent also remains that petitioner had worked under Sub Division Tihra which at that time was under the territorial jurisdiction of Electrical Sub Division Sarkaghat however Sub Division Dharampur was created in the year 2000 as per evidence on record. Although respondent in its reply had admitted that petitioner was engaged in Sub Division Tihra which was under Electrical Division Sarkaghat but the claim of the petitioner also remains that he had worked for more than 240 days contrary to allegation of respondent in para No.1 of reply but documentary evidence does not support the plea of petitioner for having worked for 240 days. It also remains the case of petitioner that fictional breaks had been given in service deliberately by the respondent in violation of the Section 25-B of the Act but again there is no corresponding evidence to establish this plea of petitioner. Enough has been emphasized by Ld. Counsel for respondent that petitioner had worked in Tihra Sub Division whereas he had claimed that he had been engaged for the first time in April 1993 in Sub Division Dharampur which was not existence in the year 2000. To appreciate evidence in this regard, it would be relevant to go through testimony of RW1 Shri S.R. Garg, Sr. Executive Engineer, Electrical Division Dharampur in which he has specifically admitted that petitioner had worked initially Tihra Sub Division and Dharampur Sub Division was created in 2000 which also fell within Electrical Division Sarkaghat. Since all these Sub Divisions fell under Electrical Division Sarkaghat, it could be inferred that Sub Division Tihra which was in existence prior to Dharampur Sub Division was the place of work of petitioner but while filing claim petition, petitioner had confined his claim as against Sub Division Sarkaghat. The factual matrix of the case remains that petitioner had worked in Tihra Sub Division as per the reply filed by the respondents. Thus, when both the Divisions were under same Electrical Division Sarkaghat, the error in not knowing the Division by petitioner who himself is illiterate person about place where he was factually first engaged does not make his case false particularly when respondent has admitted him to be employee of respondent moreover when Sub Division Tihra fell under Electrical Division Sarkagaht as Sub Division Dharampur also fell under the Electrical Division Sarkaghat. Be it stated that respondent in its reply as well as evidence has not clarified if Sub Division Tihra was under Sub Division Dharampur at any point of time when in the year 2000 it was created. Thus, evidence goes in favour of petitioner and petitioner could not be dislodged merely on the basis of his claim confined to Dharampur Sub Division and error to this could be on account of his illiteracy and lack of knowledge. Certainly, per evidence on record adduced by both the parties, petitioner had failed to prove that he had factually worked for continuously 240 days prior his alleged illegal oral termination of service and testimony of petitioner to this extent to have worked for 240 days prior to his illegal termination merits rejection and this Court is left with no option but to hold that respondent had not violated the provisions of Section 25-F of the Industrial Disputes Act because petitioner has not completed 240 days preceding his date of termination.

12. Ld. Counsel for the respondent at the time of arguments emphasized that petitioner had abandoned the job and therefore no question of termination of services requiring issuance of notice either under the Standing Rules or under the provisions of Section 25-F of the Industrial Disputes Act. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued to him calling upon to join duty. On this point, respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner whenever he absented from duty. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service which *prima facie* belies stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work which entitled him benefit of Section 25-B of the Act. In view of foregoing plea of respondent that petitioner had abandoned the job and therefore did not require issuance of notice is fallacious when specific evidence has not been led by the respondent *qua* abandonment of job by petitioner and respondent to issue notice under the Standing Orders as well as provisions of Section 25-F of the industrial Disputes Act. As such, the respondent could not derive any benefit from pleas of abandonment of job by the petitioner. In any case the respondent would also not derive any benefits from respondent having failed to establish plea of abandonment as there is no authenticated evidence establishing that petitioner had worked 240 days at any time as required under law. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

13. In so far as violation of provisions of Section 25-G of the Industrial Disputes Act is concerned from Standing Order of the Himachal Pradesh State Electricity Board, it would be relevant to go through documentary evidence on record adduced by petitioner. Ld. counsel for petitioner as per Ex. P1 tentative seniority list of T/mate (W/C), as it stood on 1-1-2010 in respect of Electrical Division, HPSEB, Dharampur which showed that S/Sh. Trilok Chand, Ajeet Singh, Shakti Chand and Dharam Chand were posted in ESD Sandhole and were working temporarily who had joined on 20-11-2002 and 19-1-2007 respectively. As per Ex. P2 petitioner is shown at serial No.11 when muster-roll dated 8-4-1993 was issued. Ex. P3 is the seniority list of Electrical Beldar (daily wages) under Electrical Division HPSEB, Sarkaghat ending on 30th April, 1996. This list is spread over in six pages in which Beldar/daily wagers who had been engaged from 1981 till 1994 have been shown. In the year 1992 Balbir Chand and Shakuntla Devi are shown to have joined in 1992 and thereafter no one has been shown to have been engaged in 1993 the year in which present petitioner and his two other colleague workers whose service were terminated were not shown. Thereafter, in the year 1994, three persons Shambu Ram, Prem Raj and Amar Singh are shown to have appointed or engaged. Thus, this document *prima facie* substantiate the plea of petitioner *qua* non inclusion of name of present claim petitioner and two others Hari Chand and Prem Chand in the seniority list Ex. P3. Thus, names of present petitioner had not been included in the list of employees engaged as Electrical Beldar (daily wages) engaged between 1981 till 1994 . Mark-A is the provisional seniority list of daily wages Beldar working under Electrical Division Sarkaghat as on 01-4-2001 which shows engagement of Trilok Chand in 1993, Ajeet Singh in 1994, Dharam Chand in 1996, Dharam Pal in 1996 and Kashmir Singh in 1996. Said Trilok Chand is shown to have been appointed on 13-10-1993 whereas present claim petitioner had been engaged in April, 1993. Exts. C1, C2, C3, C4, C5, C6 and C7 are the muster rolls showing engagement of petitioner. As such, per documentary evidence it is established that petitioner had been engaged in April 1993 and not in September, 1993 as claimed by respondent and one Trilok Chand shown in Ex. P1 had

worked with petitioner who was engaged much later *i.e.* in October, 1993 but name of petitioner and two other who joined 1993 was not reflected. Ex. P1 although shows Trilok Chand had been engaged temporarily on 2-11-2002 but claim of petitioner is not falsified more particularly in view of evasive reply of RW1 who has shown ignorance if Trilok Chand was engaged on 2-11-2002 and petitioner was engaged at the same time. Significantly, RW1 admitted that petitioner had issued legal notice Mark-F to Sarkaghat Division but the respondent/board had not given any reply. As the contents of notice were not proved in view of the fact that said document has not been exhibited but answer of RW1 who has admitted issuance of notice by petitioner has to be interpreted in favour of the petitioner to the extent that certainly notice was given when the services of petitioner had been terminated in the year 1998 as admitted by RW1 and that notice had remained un-replied.

14. PW4 Ravi Kumar, Junior Assistant in the office of Electrical Sub Division Tihra, HPSEB has deposed that he had not brought any seniority list of daily casual labourers although proved muster-rolls Ex. C1 to C7. It is specifically stated that no seniority list was prepared. PW5 Sh. Kamlesh Kumar, Addl. Engineer in the office of SEE, Electrical Division HPSEB, Sarkaghat has stated to have not brought any seniority list although PW4 proved muster rolls. He has specifically stated that as per the record, there is no seniority list of casual labourers who are merely issued casual cards. Cross-examinations of these witnesses of respondent examined by petitioner revealed that petitioner had remained posted under Sarkaghat Division prior to September, 2009. As such, from testimony of PWs no seniority list was prepared makes stand of respondent for having not prepared seniority list gets falsified as petitioner in his claim has tendered tentative seniority list as reflected in Ex. P1 obtained by petitioner under RTI Act. In view of the testimonies of the officials of the HPSEB, it is also established that no seniority list was prepared although list Ex. P3 was prepared which did not relate to the present claim petition particularly when name of petitioner was not included. At this stage, it is also relevant to mention here that reply to the claim petition in para no.1 shows that petitioner's name was mentioned as Prem Chand but when RW1 examined on this aspect by Ld. Counsel for the petitioner had specifically admitted that in the mandays chart referred in para No.1 of reply, the name of petitioner has been written as Prem Chand which was factually typing mistake and thus ambiguity shown in reply gets settled from cross-examination of RW1and name of petitioner is same as mentioned in claim petition. Since name of the petitioner was not reflected in the list which was of Beldar/daily wages as on 30-4-1996 it shows that the name of petitioner was deliberately not included to defeat his claim and at the same time it has been pointed out by the official that no seniority list was prepared. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPSEB which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had not abandoned the job by not reporting for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be applied in facts and circumstances of this case. Be it noticed that there is sufficient reliable evidence on record that after termination of service of petitioner, several new juniors had joined.

15. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble H.P. High Court reported in **Latest HLJ 2012 (HP) 591** titled as **Secretary, HPSEB, Kumar House, Shimla and Anr. vs. Sh. Piar Chand and Anr.**, the relevant para of the judgment is reproduced below for reference:—

> "Industrial Disputes Act, 1947-Section 25-G read with clause 14(2) of the Certified Standing Orders. Reinstatement. Dispensing with the service when illegal-oral removal

illegal-Respondent engaged as Beldar-He had not completed 240 days in calendar year-His services would not be dispensed with orally as per standing order-10 days notice required-The court below correctly appreciated the fact and law laid down".

16. It can be safely observed from the above judgment that under Section 25-G read with Clause 14(2) Certified Standing Orders, the services of the petitioner could not be dispensed with by removal by oral order. As the respondent in the case before Hon'ble High Court had not completed 240 days in a calendar year however the services could not be dispensed with as per Certified Standing Orders as it was required that petitioner should have been served 10 days notice under Clause 14(2) of Certified Standing Orders. Applying the ratio of the above said judgment, it may not be erroneous to hold that petitioner had not served any notice although he was engaged and disengaged twice in the year 1993 as well as in 1998. As such, the action of respondents in not complying with the mandate of above-said provisions clearly vitiate termination of the services of petitioner as has been held in judgment (2912) *supra*. As has come in the evidence that respondent has admitted that petitioner was engaged as labourer on different dates as enumerated in para No.1 of reply, it would not be material fact it had inadvertently alleged that he had been engaged in either Sub Division Tihra or Sub Division Dharampur which certainly fell under Electrical Division Sarkaghat. Ld. Counsel for the respondent has emphasized that once the petitioner has failed to establish that he had worked under Dharampur initially the same is fatal to case of petitioner but respondent had admitted engagement of petitioner several times as stated in foregoing paras, it could not be stated that claim of petitioner is false but due to petitioner's having worked under Electrical Division Sarkaghat, he was employee/worker of respondent and his services were illegally terminated by the respondent without following the provisions of Section 25-G of the Industrial Disputes Act as well Certified Standing Orders of the respondent which required respondent to issue notice of 10 days.

17. Ld. Counsel for respondent has vehemently contended that petitioner was out of employment from 20-7-1998 and the reference by Labour Commissioner had been made after lapse of 15 years. As such, claim for reengagement is stated be patently time barred moreover there is also decision as enumerated in para No.5 of reply which showed regarding decision was taken on 18-12-2012 and the same was placed before the Hon'ble High Court in pursuance to order of Hon'ble High Court, be it stated that respondent had not filed copy of order. As such, the policy concerning reengagement could not be looked as against the claim of petitioner however in so far delay in filing of claim petition it relevant to go through reference No.140/2013 received from Labour Commissioner, Govt. of Himachal Pradesh in the month of August, 2013 which shows that petitioner raised demand on 28-7-2004 regarding his illegal termination from service by the Executive Engineer when matter was referred to Labour Officer-*cum*-Conciliation Officer, Mandi, H.P. who submitted his failure report and the Labour Commissioner rejected the claim for making reference vide order dated 17-8-2006. In pursuance to which CWP No.76/2008 which was decided on 26-7-2013 *vide* which plea of petitioner was accepted quashing the order dated 17-8-2006 directing the Labour Commissioner to make reference to Industrial Tribunal in accordance with law. Therefore reference was made under the provisions of Industrial Disputes Act which was received on 29-8-2013. As such, petitioner has issued demand notice after his termination in the year 1998 after gap of six years. A period of two years has been taken in proceedings before the Labour Officer-*cum*-Conciliation Officer, Mandi who submitted failure report and Labour Commissioner declined to make reference which was challenged after two years although petitioner had remained litigating at different stages but had sufficient explanation for non issuance of demand notice immediately when his services were terminated in the year 1998. As such, the reference received from the Labour Commissioner shows that petitioner had issued demand notice on 28-7-2004 after gap of above six years. As such, there is unexplained delay as per law laid down in the **Ajayab Singh** vs**. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** however the Hon'ble Apex Court held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

19. Repudiating the arguments by Ld. Counsel for the respondents, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrative in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Counsel for respondents on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare &**

another reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/ petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement.

20. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to be kept in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 02 years and actually worked for 133 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years**. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon‟ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through aforestated judgments relied upon by petitioner which are not applicable in this present case as this court has not declined relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** (*supra*). In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within **four months** from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from the date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of October, 2017.

Sd/-
(K. K. Sharma),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 141/2013
Date of Institution : 09-09-2013
Date of Decision : 09-10-2017

Shri Hari Chand s/o Shri Parma Ram, r/o Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, District Mandi, H.P. ..*Petitioner.*

Versus

The Executive Engineer Himachal Pradesh State Electricity Board, Division Dharampur, District Mandi, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vinesh Dhiman, Adv.

For the Respondent : Sh. B.K. Sood, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether termination of the services of Sh. Hari Chand S/O Shri Parma Ram, resident of Village Kaloga, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. by The Executive Engineer, Himachal Pradesh State Electricity Board, Division Dharampur, Distt. Mandi, (H.P.) *w.e.f.* 21-7-1998 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged as beldar/daily wager by respondent no.1 in Sub Division Dharampur on muster-roll basis in April, 1993 whose job continued till June 1993 who was again engaged in the month of June 1993 till March 1994. After that for one month and thereafter for three months when his services were terminated as there existed no post of labourer in Division Sarkaghat however if future vacancy arose, the petitioner would be engaged again. Averments made in the claim petition further revealed that petitioner had been again engaged on 26-5-1998 when he continued to work upto 20th July, 1998 and on 21st July, 1998 the service of petitioner had been orally terminated by respondent without following mandatory provisions envisaged under Industrial Disputes Act as well as in violation of respondent's own Standing Orders. It further revealed that petitioner had worked with respondent more than 18 months whose services had been terminated in violation of provisions of Sections 25-G, 25-H and 25-N of the Industrial Disputes Act and as such the impugned order *qua* termination was in violation of mandatory provisions. The grievance of the petitioner also remains that several workers junior to the petitioner namely Trilok Chand s/o Rikhi Ram, Ajeet Singh s/o Bidhi Singh, Dharm Chand s/o Sh. Shankar Dass, Dharam Chand s/o Bhagat Ram, Kashmir Singh s/o Sobha Ram, Sh. Sohan singh s/o Ram Dass had been retained in service whereas petitioner was disengaged from his service and despite request for employing him again followed by a legal notice to respondent No.1 to allow him to join duty but in vain. It is also alleged that the services of petitioner had been deliberately interrupted by giving fictional breaks on account of alleged cessation of work in order to stop the petitioner to complete 240 days in a calendar year. Accordingly, it is also alleged that as per provisions contained in Standing Orders the workers who had not completed 240 days are required to be given 10 days notice for retrenchment which had not been done by the respondent. As such, respondent is stated to have retrenched the service of the petitioner without prior notice as stated above and at the same time no retrenchment compensation had been given to him. Accordingly, petitioner prays to declare order of termination of the services of petitioner *null* and *void* with further prayer for consequential relief and all the other allowances such as back wages, seniority, past service benefits and compensation alongwith interest and to other relief, petitioner is found entitle.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, cause of action. On merits denied that petitioner had been engaged in Dharampur Sub Division but petitioner had been engaged in Sub Division Tihra which at the time was within domain of Electrical Division Sarkaghat. While referring to mandays chart in para No.1 of reply respondent has specifically alleged that petitioner had worked for 10 days from 21-8-93 to 20-9-93 for which muster roll No.427/93 had been issued, 28 days from 21-9-93 to 20-10-93 on muster-roll No.434/93, 31 days from 21-10-93 to 20-11-93 for which muster roll No. 504/93 had been issued, 18 days from 3-1-94 to 20.94 for which muster-roll No. 663/93 had been issued, 10 days from 21-1-94 to 30-1-94 under muster-roll No.735/94, 21 days from 31-1-94 to 20-2-94 for which muster-roll No.738/94 had been issued and 23 days from 26-5-98 to 20-6-98 for which muster-roll No.39/98 had been issued and 22 days from 21-6-98 to 20-7-98. for which muster roll No.41/98 had been issued. Thus respondent has admitted to have engaged petitioner as detailed in

para no.1 of the reply but denied that persons whose names are mentioned in para No.2 were junior to petitioner besides emphasized that petitioner had himself left/abandoned his job and therefore he could not have been compelled to join the service and therefore it could not be stated that provisions of Sections 25-G, 25-H and 25-N had been violated. It is also asserted that claim petition is not within limitation which has been filed with the object of to harass the replying respondent. It is also alleged that once petitioner himself abandoned the job, then no question arises to stop the petitioner to complete 240 days. It is also emphasized that provisions of Sections stated above under the Industrial Disputes Act could be attracted only when the services of petitioner had been terminated rather petitioner is stated to have abandoned the job. The respondent while contesting the claim petition had also referred to decision dated 18-12-2012 in pursuance to which Hon"be High Court of H.P. on the basis of CWP No. 9440/12 titled as Bilu Ram *vs.* State of H.P. in which respondent has asserted its stand that respondent was not making any fresh recruitment. It further remains the case of respondent that there is no requirement of additional manpower with the respondent board and therefore in view of decision taken in letter dated 18-12-2012 did not require reengagement of the petitioner moreso when petition is stated to be hopelessly time barred as reference has been made after lapse of 15 years from last employment of petitioner on 20-7-1998. Accordingly, petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1, PW2 Sh. Gian Chand, PW3 Sh. Roop Lal, PW4 Sh. Ravi Kumar, PW5 Sh. Kamlesh Kumar, tendered/proved their affidavits Ex. PW1/A, PW2/A, PW3/A, PW4/A and PW5/A under Order 18 Rule 4 CPC, copy of seniority list Mark-A, copy of letter issued to the Labour Officer, Mandi Mark-B, copy of working days of daily waged workers Mark-C, copy of letter dated 25-9-2007 Mark-D, copy of letter dated nil regarding reinstatement on the post of daily wager Mark-E, copy of legal notice dated 21-7-1998 Mark-F, copy of legal notice dated 22-7-1998 Mark-G, copy of legal notice dated nil Mark-H, Copy of muster rolls Ex. C1 to C7, copy of RTI letter dated 24-6-2016 Ex. P1, copy of muster roll Ex. P2, copy of service particulars of electrical beldar Ex. P3 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Sant Ram, Sr. Executive Engineer, Electrical Division, Dharampur, HPSEB Ltd. as RW1 tendered/proved his affidavit Ex. RW1/A and closed the evidence. Therefore petitioner had moved an application under Rule 15 of the Industrial Disputes Act, 1947 read with Section 151 CPC for leading additional evidence which was allowed by this Court on 8-4-2016 in pursuance to which petitioner had led additional evidence examined PW4 Sh. Ravi Kumar, Junior Assistant O/o Electrical Sub Division Tihra, HPSEB, Tehsil Sarkaghat, District Mandi, H.P. tendered/proved copy of muster-roll Ex. C1 to C7. PW5 Sh. Kamlesh Kumar Gautam, Addl. Asstt. Engineer o/o SEE, Electrical Division HPSEB, Tehsil Sarkaghat, District Mandi, H.P. tendered/proved Ex.P1 to Ex. P3 and closed evidence. Respondent however, did not lead any additional evidence as is evident from statement record on 05-11-2016.

7. I have heard the ld. counsel of petitioner and ld. counsel representing respondents, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 01-3-2014 for determination:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 21-7-1998 is/was illegal and unjustified as alleged? ...*OPP.*

2. Whether the petitioner has a cause of action? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form? ...*OPR.*

4. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Discussed

*Issue No.*2 : Discussed

*Issue No.*3 : No

Relief : Petition is partly allowed awarding compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that respondent in its reply has specifically admitted in para No.1 of claim petition that petitioner had worked for 163 days in all 10 days, 28 days, 31 days, 18 days, 10 days, 21 dyas as against muster-roll No.427/93, 434/93, 504/93, 663/93, 735/94, 738/94 and 23 days & 22 days as against muster-rolls No. 39/98 and 41/98 which showed that petitioner had factually not worked for 240 days. The case of respondent also remains that petitioner had worked under Sub Division Tihra which at that time was under the territorial jurisdiction of Electrical Sub Division Sarkagaht however Sub Division Dharampur was created in the year 2000 as per evidence on record. Although respondent in its reply had admitted that petitioner was engaged in Sub Division Tihra which was under Electrical Division Sarkaghat but the claim of the petitioner also remains that he had worked for more than 240 days contrary to allegation of respondent in para No.1 of reply but documentary evidence does not support the plea of petitioner for having worked for 240 days. It also remains the case of petitioner that fictional breaks had been given in service deliberately by the respondent in violation of the Section 25-B of the Act but again there is no corresponding evidence to establish this plea of petitioner. Enough has been emphasized by Ld. Counsel for respondent that petitioner had worked in Tihra Sub Division whereas he had claimed that he had been engaged for the first time in April 1993 in Sub Division Dharampur which was not existence in the year 2000. To appreciate evidence in this regard, it would be relevant to go through testimony of RW1 Shri S. R. Garg, Sr. Executive Engineer, Electrical Division Dharampur in which he has specifically admitted that petitioner had worked initially Tihra Sub Division and Dharampur Sub Division was created in 2000 which also fell within Electrical Division Sarkaghat. Since all these Sub Divisions fell under Electrical Division Sarkaghat, it could be inferred that Sub Division Tihra which was in existence prior to Dharampur Sub Division was the place of work of petitioner but while filing claim petition, petitioner had confined his claim as against Sub Division Sarkaghat. The factual matrix of the case remains that petitioner had worked in Tihra Sub Division as per the reply filed by the respondents. Thus, when both the Divisions were under same Electrical Division Sarkaghat, the error in not knowing the Division by petitioner who himself is illiterate person about place where he was first engaged does not make his case false particularly when respondent has admitted him to be employee of respondent moreover when Sub Division Tihra fell under Electrical Division Sarkagaht as Sub Division Dharampur also fell under the Electrical Division Sarkaghat. Be it stated that respondent in its reply as well as evidence has not clarified if Sub Division Tihra was under Sub Division Dharampur at any point of time when in the year 2000 it was created. Thus, evidence goes in

favour of petitioner and petitioner could not be dislodged merely on the basis of his claim confined to Dharampur Sub Division and error to this could be on account of his illiteracy and lack of knowledge. Certainly, per evidence on record adduced by both the parties, petitioner had failed to prove that he had factually worked for continuously 240 days prior his alleged illegal oral termination of service and testimony of petitioner to this extent to have worked for 240 days prior to his illegal termination merits rejection and this Court is left with no option but to hold that respondent had not violated the provisions of Section 25-F of the Industrial Disputes Act because petitioner has not completed 240 days preceding his date of termination.

12. Ld. Counsel for the respondent at the time of arguments emphasized that petitioner had abandoned the job and therefore no question of termination of services requiring issuance of notice either under the Standing Rules or under the provisions of Section 25-F of the Industrial Disputes Act. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued to him calling upon to join duty. On this point, respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner whenever he absented from duty. No reason whatsoever has been assigned for such inaction or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service which *prima facie* belies stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 240 days of work which entitled him benefit of Section 25-B of the Act. In view of foregoing plea of respondent that petitioner had abandoned the job and therefore did not require issuance of notice is fallacious when specific evidence has not been led by the respondent *qua* abandonment of job by petitioner and respondent to issue notice under the Standing Orders as well as provisions of Section 25-F of the industrial Disputes Act. As such, the respondent could not derive any benefit from pleas of abandonment of job by the petitioner. In any case the respondent would also not derive any benefits from respondent having failed to establish plea of abandonment as there is no authenticated evidence establishing that petitioner had worked 240 days at any time as required under law. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

13. In so far as violation of provisions of Section 25-G of the Industrial Disputes Act is concerned from Standing Order of the Himachal Pradesh State Electricity Board, it would be relevant to go through documentary evidence on record adduced by petitioner. Ld. Counsel for petitioner as per Ex. P1 tentative seniority list of T/mate (W/C), as it stood on 1-1-2010 in respect of Electrical Division, HPSEB, Dharampur which showed that S/Sh. Trilok Chand, Ajeet Singh, Shakti Chand and Dharam Chand were posted in ESD Sandhole and were working temporarily who had joined on 20-11-2002 and 19-1-2007 respectively. Ex. P3 is the seniority list of Electrical Beldar (daily wages) under Electrical Division HPSEB, Sarkaghat ending on 30th April, 1996. This list is spread over in six pages in which Beldar/daily wagers who had been engaged from 1981 till 1994 have been shown. In the year 1992 Balbir Chand and Shakuntla Devi are shown to have joined in 1992 and thereafter no one has been shown to have been engaged in 1993 the year in which present petitioner and his two other colleague workers whose service were terminated were not shown. Thereafter, in the year 1994, three persons Shambu Ram, Prem Raj and Amar Singh are shown to have appointed or engaged. Thus, this document *prima facie* substantiate the plea of petitioner *qua* non inclusion of name of present claim petitioner and two others Hem Singh and Prem Chand in the seniority list Ex. P3. Thus, names of present petitioner had not been included in

the list of employees engaged as Electrical Beldar (daily wages) engaged between 1981 till 1994. Mark-A is the provisional seniority list of daily wages Beldar working under Electrical Division Sarkaghat as on 01-4-2001 which shows engagement of Trilok Chand in 1993, Ajeet Singh in 1994, Dharam Chand in 1996, Dharam Pal in 1996 and Kashmir Singh in 1996. Said Trilok Chand is shown to have been appointed on 13-10-1993 whereas present claim petitioner had been engaged in April, 1993. Exts. C1, C2, C3, C4, C5, C6 and C7 are the muster-rolls showing engagement of petitioner. As such, per documentary evidence it is established that petitioner had been engaged in April 1993 and not in September 1993 as claimed by respondent and one Trilok Chand shown in Ex. P1 had worked with petitioner who was engaged much later *i.e.* in October 1993 but name of petitioner and two other who joined 1993 was not reflected. Ex. P1 although shows Trilok Chand had been engaged temporarily on 2-11-2002 but claim of petitioner is not falsified more particularly in view of evasive reply of RW1 who has shown ignorance if Trilok Chand was engaged on 2-11-2002 and petitioner was engaged at the same time. Significantly, RW1 admitted that petitioner had issued legal notice Mark-F to Sarkaghat Division but the respondent/board had not given any reply. As the contents of notice were not proved in view of the fact that said document has not been exhibited but answer of RW1 who has admitted issuance of notice by petitioner has to be interpreted in favour of the petitioner to the extent that certainly notice was given when the services of petitioner had been terminated in the year 1998 as admitted by RW1 and that notice had remained un-replied.

14. PW4 Ravi Kumar, Junior Assistant in the office of Electrical Sub Division Tihra, HPSEB has deposed that he had not brought any seniority list of daily casual labourers although proved muster rolls Ex. C1 to C7. It is specifically stated that no seniority list was prepared. PW5 Sh. Kamlesh Kumar, Addl. Engineer in the office of SEE, Electrical Division HPSEB, Sarkaghat has stated to have not brought any seniority list although PW4 proved muster rolls. He has specifically stated that as per the record, there is no seniority list of casual labourers who are merely issued casual cards. Cross-examinations of these witnesses of respondent examined by petitioner revealed that petitioner had remained posted under Sarkaghat Division prior to September 2009. As such, from testimony of PWs that no seniority list was prepared makes stand of respondent for having not prepared seniority list gets falsified as petitioner in his claim has tendered tentative seniority list as reflected in Ex. P1 obtained by petitioner under RTI Act. In view of the testimonies of the officials of the HPSEB, it is also established that no seniority list was prepared although list Ex. P3 was prepared which did not relate to the present claim petition particularly when name of petitioner was not included. Since name of the petitioner was not reflected in the list which was of Beldar/daily wages as on 30-4-1996 it shows that the name of petitioner was deliberately not included to defeat his claim and at the same time it has been pointed out by the official that no seniority list was prepared. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPSEB which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had not abandoned the job by not reporting for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be applied in facts and circumstances of this case. Be it noticed that there is sufficient reliable evidence on record that after termination of service of petitioner, several new juniors had joined.

15. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble H.P. High Court reported in **Latest HLJ 2012 (HP) 591** titled as **Secretary, HPSEB, Kumar House, Shimla and**

Anr. vs. **Sh. Piar Chand and Anr.**, the relevant para of the judgment is reproduced below for reference:—

> "Industrial Disputes Act, 1947-Section 25-G read with clause 14(2) of the Certified Standing Orders. Reinstatement. Dispensing with the service when illegal-oral removal illegal-Respondent engaged as Beldar-He had not completed 240 days in calendar year-His services would not be dispensed with orally as per standing order-10 days notice required-The court below correctly appreciated the fact and law laid down".

16. It can be safely observed from the above judgment that under Section 25-G read with Clause 14(2) Certified Standing Orders, the services of the petitioner could not be dispensed with by removal by oral order. As the respondent in the case before Hon'ble High Court had not completed 240 days in a calendar year however the services could not be dispensed with as per Certified Standing Orders as it was required that petitioner should have been served 10 days notice under Clause 14(2) of Certified Standing Orders. Applying the ratio of the above said judgment, it may not be erroneous to hold that petitioner had not served any notice although he was engaged and disengaged twice in the year 1993 as well as in 1998. As such, the action of respondents in not complying with the mandate of above-said provisions clearly vitiate termination of the services of petitioner as has been held in judgment (2912) *supra*. As has come in the evidence that respondent has admitted that petitioner was engaged as labourer on different dates as enumerated in para No.1 of reply, it would not be material fact it had inadvertently alleged that he had been engaged in either Sub Division Tihra or Sub Division Dharampur which certainly fell under Electrical Division Sarkaghat. Ld. Counsel for the respondent has emphasized that once the petitioner has failed to establish that he had worked under Dharampur initially the same is fatal to case of petitioner but respondent had admitted engagement of petitioner several times as stated in foregoing paras, it could not be stated that claim of petitioner is false but due to petitioner's having worked under Electrical Division Sarkaghat, he was employee/worker of respondent and his services were illegally terminated by the respondent without following the provisions of Section 25-G of the Industrial Disputes Act as well Certified Standing Orders of the respondent which required respondent to issue notice of 10 days.

17. Ld. Counsel for respondent has vehemently contended that petitioner was out of employment from 20-7-1998 and the reference by Labour Commissioner had been made after lapse of 15 years. As such, claim for reengagement is stated be patently time barred moreover there is also decision as enumerated in para No.5 of reply which showed regarding decision was taken on 18-12-2012 and the same was placed before the Hon'ble High Court in pursuance to order of Hon'ble High Court, be it stated that respondent had not filed copy of order. As such, the policy concerning reengagement could not be looked as against the claim of petitioner however in so far delay in filing of claim petition it relevant to go through reference No.140/2013 received from Labour Commissioner, Govt. of Himachal Pradesh in the month of August, 2013 which shows that petitioner raised demand on 28-7-2004 regarding his illegal termination from service by the Executive Engineer when matter was referred to Labour Officer-cum-Conciliation Officer, Mandi, H.P. who submitted his failure report and the Labour Commissioner rejected the claim for making reference vide order dated 17-8-2006. In pursuance to which CWP No.76/2008 which was decided on 26-7-2013 vide which plea of petitioner was accepted quashing the order dated 17-8-2006 directing the Labour Commissioner to make reference to Industrial Tribunal in accordance with law. Therefore reference was made under the provisions of Industrial Disputes Act which was received on 29-8-2013. As such, petitioner has issued demand notice after his termination in the year 1998 after gap of six years. A period of two years has been taken in proceedings before the Labour Officercum-Conciliation Officer, Mandi who submitted failure report and Labour Commissioner declined to make reference which was challenged after two years although petitioner had remained litigating at different stages but had sufficient explanation for non issuance of

demand notice immediately when his services were terminated in the year 1998. As such, the reference received from the Labour Commissioner shows that petitioner had issued demand notice on 28-7-2004 after gap of above six years. As such, there is unexplained delay as per law laid down in the **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** however the Hon'ble Apex Court held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

18. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Counsel has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

19. Repudiating the arguments by Ld. Counsel for the respondents, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrative in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has

relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Counsel for respondents on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC** supra, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement.

20. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to be kept in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 163 days as per mandays chart on record and that the services of petitioner were disengaged in 1998 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years**. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through aforestated judgments relied upon by petitioner which are not applicable in this present case as this court has not declined relief to the petitioner on the

ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** (*supra*). In view of foregoing discussion, a lump-sum compensation of Rs.85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within **four months** from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from the date of Award till its realization. Issues No. 1 to 3 are answered accordingly.

RELIEF

21. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-
CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 273/ 2016

Shri Surinder Kumar s/o Shri Chand Ram, r/o Village Kundi, P.O. Singhdhar, Tehsil Salooni, Distt. Chamba, H.P. ..*Petitioner.*

Versus

1. The Employer/Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P.

2. The Managing Director, M/s Adecco Flexione Workforce Solutions Pvt. Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab(Contractor Company). ..*Respondents.*

17-10-2017 Present: None for the petitioner.

Sh. Vinod Kumar, Adv. Vice of Sh. Rajat Sahotra, Adv. Csl. for the respondent No.1.

Sh. Munish Katoch, Adv. Csl. for the respondent No.2.

Power of attorney has been filed on behalf of respondent No. 2. Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

17-10-2017 Present: None for the petitioner.

Sh. Vinod Kumar, Adv. vice of Sh. Rajat Sahotra, Adv. Csl. for the respondent No.1.

Sh. Munish Katoch, Adv. Csl. for the respondent No. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
17-10-2017

Sd/-
(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref. No. : 114/ 2016

Shri Om Prakash s/o Shri Pratap Singh, r/o Village Chamera, P.O. Janghi, Tehsil & District Chamba, H.P. ..*Petitioner.*

Versus

1. The Employer/Managing Director, M/s GVK Emergency Management and Research Institute, Dharampur, District Solan, H.P.

2. The Managing Director, M/S Adecco Flexione Workforce Solutions Pvt. Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab(Contractor Company). ..*Respondents.*

17-10-2017 Present: None for the petitioner.

Sh. Vinod Kumar, Adv. vice of Sh. Rajat Sahotra, Adv. Csl. for the respondent No.1.
Sh. Munish Katoch, Adv. Csl. for the respondent No. 2.

Power of attorney has been filed on behalf of respondent No. 2. Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.Sharma)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

17-10-2017 Present: None for the petitioner.

Sh. Vinod Kumar, Adv. vice of Sh. Rajat Sahotra, Adv. Csl. for the respondent No.1.

Sh. Munish Katoch, Adv. Csl. for the respondent No.2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.35 P.M. None appearance of petitioner or his Ld. Counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
17-10-2017

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT - CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 137/17

Smt. Banita Devi w/o Shri Dev Raj, r/o V.P.O. Nihari, Tehsil Ghumarwin, District Bilaspur, H.P. ..*Petitioner.*

Versus

1. The Chief Medical Officer, Regional Hospital, Bilaspur, H.P. (Principal Employer).

2. The Proprietor M/s Shimla Cleanways, H.O. Sahibu Niwas, Sector-2, New Shimla, H.P. (contractor). ..*Respondents.*

_____

24-10-2017 Present: Sh. Bhagat Singh Verma, Adv. csl. for the petitioner.

None for the respondent No. 1.

Sh. Vikramjit Sharma, Adv. csl. for the respondent No. 2

Power of attorney has been filed on behalf of petitioner. Memo of appearance has also been filed on behalf of respondent No. 2. Summon sent for service of respondent No.1 has not been received back served or unserved.

2. Heard. At this stage, Ld. Csl. for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the Ld. Csl. for the petitioner as stated above, the reference No. 137/17 is hereby dismissed as withdrawn.

3. Ordered accordingly. The parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

6. The file, after completion be consigned to the records.

Announced.
24-10-2017

Sd/-
(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT- CUM- **INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**
(CAMP AT MANDI)

Ref. No. : 147/ 2017

Sh. Bhoop Singh s/o Sh. Inder Singh, r/o Village Ghata, P.O. Kummi, Tehsil Balh, District Mandi, H.P. ..*Petitioner.*

Versus

1. The General Manager, M/s Sapna Cars Pvt. Ltd., N.H.-21, Gutkar, District Mandi, H.P.

2. The H.R. Manager, M/s Sapna Cars Pvt. Ltd.,N.H.-21, Gutkar, District Mandi, H.P.
...*Respondents.*

27-10-2017 Present: None for the petitioner.

Sh. Deepak Azad, adv. csl. for the respondents.

Power of attorney has been filed on behalf of respondents. Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

Sd/-
(K.K.Sharma)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

27-10-2017 Present: None for the petitioner.

Sh. Deepak Azad, Adv. Csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
27-10-2017

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 214/2016

Date of Institution : 11.04.2016

Date of Decision : 16.10.2017

Smt. Sebo Kumari w/o Shri Jagdish Kumar, r/o Village Findru, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.P.H./H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Smt. Sebo Kumari w/o Shri Jagdish Kumar, R/O Village Findru, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during October, 2002 by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised her industrial dispute after more than 9 years *vide* demand notice dated 23.01.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during May, 1995 to October, 2002 and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been appointed on daily wage basis on muster roll in the year 1995 who continuously worked till October, 2002 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous

services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had re-engaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jai Dass who appointed in 1998, Tek Chand in 1999, Baldev in 2000, Amar Nath in 2000, Balak Chand also in 2000, Shyam Lal in 2000, Prakash Chand in 2001, Sucheta Ram in 2001, Trilok Chand in 2002, Hari in 2003, Hari Ram in 2003, Ram Dei in 2003 and Budhi Ram in 2003. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from October, 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 23-1-2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 63/2016 which had been decided on 22-2-2016 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in October, 2002 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1995 to 2002. She further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation

of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2002, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of list of workers Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case

8. From the contentions raised, following issues were framed on 30-8-2017 for determination:

1. Whether the termination of services of petitioner by the respondent during October, 2002 is/was illegal and unjustified as alleged? ...*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief: Petition is partly allowed awarding compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till October, 2002 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to October, 2002. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner

to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 141 days in the year 1995, 138 days in 1996, 57 days in 1997, 39 days in 1998, 56 days in 1999, 30 days in 2000, 49 days in 2001 and 112 days in 2002 and thus a total of her service in 1995 to 2002 in 08 years she had worked for 622 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2002 the petitioner had merely worked for 112 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2002 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Counsel for petitioner has contended that after petitioner's termination in October, 2002, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which

Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

17. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieoner relief claimed for by him. On the other hand, Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
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> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that he would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D.Act- Workman worked from 1-11-1984 to 17.2.1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

20. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/ petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar**

Paul vs. BSNL & another reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No. 5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

21. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the

judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 622 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **9 ½ years** *i.e.* demand notice was given on 23-1-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs. 85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue No. 3

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of October, 2017.

Sd/-
(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 118/2016
Date of Institution : 04-03-2016
Date of Decision : 16-10-2017

Shri Khem Raj s/o Shri Gulab Chand, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. ..*Petitioner.*

Versus

The Executive Engineer, Division H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR.
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Khem Raj s/o Shri Gulab Chand, r/o Village Findpar, P.O. Midhal, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notce dated 6-1-2012 regarding his alleged illegal termination of service during May, 2004 suffers from delay and laches? If not, whether termination of services of Shri Khem Raj s/o Shri Gulab Chand, r/o Village Findpar, P.O. Midhal, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P during May, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the year 1997 who continuously worked till May, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jeet Singh who appointed in 1997, Geeta Ram in 1998, Laxmi Devi in 1999, Baldev in 2000, Parkash Chand in 2001, Trilok Chand in 2002, Hari Ram in 2003 and Ram Dei in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand

notice dated 23-1-2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 4407/2015 which had been decided on 2-12-2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in May, 2004 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to 2004. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *interalia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of list of workers Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-8-2017 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 06-01-2012 *qua* his termination of service during May, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of the petitioner by the respondent during May, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till May, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba

District and remained engaged from 1994 to May, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in May, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after May, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 6 days in the year 1994, 137 days in 1997, 45 days in 1998, 121 days in 1999 and 5 days in 2004 and thus a total of his service in 1994 to 2004 in 05 years he had worked for 314 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 81 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner

despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after May, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No. 4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Counsel for petitioner has contended that after petitioner's termination in May, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

17. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitionEr relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court). In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court).

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that

principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I. D. Act- Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

20. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak**

Mahavidyalaya (D.Ed.) and Ors. reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

21. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 314 days as per mandays chart on record and that the services of petitioner were disengaged in May, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 06-1-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view

of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs. 60,000 (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

Issue No. 4

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 60,000 (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority, past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 173/2016
Date of Institution : 17.03.2016
Date of Decision : 16.10.2017

Shri Pritam Singh s/o Shri Suba Ram, r/o Village Chhow, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. ....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D., Division Killar, Tehsil Pangi, District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Sh. Pritam Singh s/o Sh. Suba Ram r/o Village Chhow, P/O Purthi, Tehsil Pangi, District Chamba, H.P. from 2004, by the Executive Engineer, H.P.P.W.D Division, Killar, Tehsil Pangi, District Chamba, H.P who had worked as Beldar on daily wages basis only for 78 days, 102 days, 26 days, 75.5 days, 111 days, 137 days and 79 days during the year 1998, 1999, 2000, 2001, 2002, 2003, 2004 and had raised his industrial dispute *vide* demand notice dated 8/5/2012, after delay of more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the year 1997 who continuously worked till August, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil, District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workmen from time to time and while doing so, respondent had not followed the principle of 'Last' come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Janto Devi who appointed in 2001, Jeet Singh in 1997, Gijja Ram in 1999, Laxmi Devi in 1999 and Gian Chand in 1997. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no chargesheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 08-5-2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No. 8315/2012 which had been decided on 20-12-2012 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in September, 2004 as well as period of intermittent/ fictional breaks deliberately given time and again during entire service of petitioner between 1997 to August, 2004. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits

denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1998 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of list of workers Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30.8.2017 for determination:

1. Whether the termination of services of petitioner by the respondent *w.e.f.* 2004 is/was illegal and unjustified as alleged? ...*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief. : Petition is partly allowed awarding compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster roll basis in the year 1998 continuously worked till August, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1998 till 2004 whereas the claimant/petitioner alleges that he had worked from 1997 to August, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 1998 and not in 1997. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any

explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 78 days in the year 1998, 102 days in 1999, 26 days in 2000, 75.5 days in 2001, 111 days in 2002, 137 days in 2003 and 79 days in 2004 and thus a total of his service in 1998 to 2004 in 07 years he had worked for 608 ½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 79 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the junior workers mentioned in para No.4 of the affidavit were

retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Counsel for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of Ld. Counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in crossexamination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

17. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no

application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. *(supra)*1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute inspite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-*cum*- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a

case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. Counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I. D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable.

[Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief.**

20. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 (3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act

did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

21. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 608 ½ days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eighty years** *i.e.* demand notice was given on 08-5-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals

reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. More so in view of observation *qua* facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs.85,000 (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1,2 and 4 are answered accordingly.

Issue No. 3 :

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.85,000 (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement back wages, seniority, past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of October, 2017.

Sd/-
(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 200/2016
Date of Institution : 26-03-2016
Date of Decision : 16-10-2017

Smt. Kishan Dei w/o Shri Uggar Chand, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. ….*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Smt. Kishan Devi w/o Shri Uggar Chand, r/o Village Findpar, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. during September, 2004 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as Beldar on daily wages and has raised her industrial dispute after more than 7 years *vide* demand notice dated 06.01.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been appointed on daily wage basis on muster roll in the year 1995 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating

therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has come to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jai Dass who appointed in 1998, Tek Chand in 1999, Baldev in 2000, Amar Nath in 2000, Balak Chand also in 2000, Shyam Lal in 2000, Prakash Chand in 2001, Sucheta Ram in 2001, Trilok Chand in 2002, Hari in 2003, Hari Ram in 2003, Ram Dei in 2003 and Budhi Ram in 2003. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 6-1-2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.130/2016 which had been decided on 22-2-2016 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in September, 2004 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1996 to 2004. She further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has

maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of list of workers Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. Counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30-8-2017 for determination:

1. Whether the termination of services of petitioner by the respondent during Sept. 2004/is was illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...*OPR.*

Relief :

9. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : Discussed

Relief : Petition is partly allowed awarding compensation of Rs.95,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till September, 2004 with the respondent. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. However, there is dispute with regard to period for which the petitioner has worked with respondent. It is evident from mandays chart Ex. RW1/B coupled with pleadings of respondent that petitioner had worked from 1997 till 2004 whereas the claimant/petitioner alleges that he had worked from 1995 to September, 2004. Since the claim of petitioner is not substantiated from any corresponding documentary evidence on record, the only inference in such situation could be drawn is that petitioner had been factually engaged in the year 1997 and not in 1995. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically

admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 131 days in the year 1997, 132 days in 1998, 84 days in 1999, 51 days in 2000, 72 days in 2001, 113 days in 2002, 72 days in 2003 and 91 days in 2004 and thus a total of her service in 1997 to 2004 in 08 years she had worked for 746 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 91 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having

remained not gainfully employed gets belied admission of petitioner in crossexamination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon‟ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

17. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the

Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors.** v. **Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... in Ratan Chandra Sammanta and Ors. *v.* Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that he would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh vs. The Sirhind Co-Operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute

with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another** vs. **Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by Ld. counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of LAbour Court that workman had completed 240 days in calendar year and her termination was in violation of section 25-F of the I.D. Act-Workman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs. one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable.
>
> [Paras 21 and 22]

Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

20. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 *supra*) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh** vs. **General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by Ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of 'Last come First go' was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand

before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

21. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 746 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 6-1-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by Ld. Counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar** v. **Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. More so in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs.95,000/- (Rupees ninety five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of

compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue no. 3

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 95,000/- (Rupees ninety five thousand only) to the petitioner in lieu of the reinstatement back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 64/2016
Date of Institution : 20-02-2016
Date of Decision : 16-10-2017

Smt. Krishni w/o Shri Vijay Kumar, r/o Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. ….*Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Krishni w/o Shri Vijay Kumar, r/o Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 2.6.2012 regarding her alleged illegal termination of service during September, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Krishni w/o Shri Vijay Kumar, r/o Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been appointed on daily wage basis on muster roll in the year 1991 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as 'continuous services' for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of

petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of 'Last come, First go' envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Janto Devi who appointed in 2001, Jeet Singh in 1997, Gijja Ram in 1999, Laxmi Devi in 1999 and Gian Chand in 1997. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no chargesheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised *vide* demand notice dated 02-6-2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP No.4397/2015 which had been decided on 21-11-2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in September, 2004 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1991 to 2004. She further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged Beldar in 1991 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para No. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para No.4 are stated to have engaged as per direction of the Labour Court-*cum*-Industrial Tribunal Dharamshala and respondent had not violated the principle of 'Last come, First go'. It is also contended that if petitioner had been terminated in 2004, she would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of list of workers Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the Ld. counsel of petitioner and Ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20-10-2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 02-06-2012 *qua* her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP.*

2. Whether termination of the services of petitioner by the respondent during September, 2004 is/was illegal and unjustified as alleged? ...*OPP.*

3. If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPR.*

4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

5. For the reasons detailed here under, my findings on the above issues are as follows:—

*Issue No.*1 : Discussed

Issue No. 2 : Yes

Issue No. 3 : Discussed

Issue No. 4 : No

Relief : Petition is partly allowed awarding compensation of Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No.1 2, and 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged Beldar by respondent on muster roll basis in the year 1991 continuously worked till September, 2004 with the respondent

is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1991 to September, 2004. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This *prima facie* belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 39 days in the year 1991, 30 days in 1994, 82 days in 1995, 111 days in 1999, 55 days

in 2000, 72 days in 2002, 107 days in 2003 and 19 days in 2004 and thus a total of her service in 1991 to 2004 in 08 years she had worked for 515 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 112 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no *iota* of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para No.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1991 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Sections 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. Counsel for petitioner has contended that after petitioner's termination in September, 2004, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, Ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (*supra*) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be

entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 *supra*), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

17. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh** *vs.* **General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (*supra*) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to *supra,* wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to *supra.* Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to *supra.*
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. vs. Union of India and Ors. (*supra*)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at

hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that he would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and

intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

20. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon"ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting

an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

21. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services

have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 515 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 2-6-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs. 80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the

reinstatement back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of October, 2017.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 205/2016
Date of Institution : 26-03-2016
Date of Decision : 16-10-2017

Shri Narinder Kumar s/o Shri Nanak Chand, r/o Village and Post Office Ponto, Tehsil Pangi, District Chamba, H.P. ….*Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D., Division Killar, Tehsil Pangi, District Chamba, H.P. ....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Narinder Kumar S/O Shri Nanak Chand, R/O Village and Post Office Ponto, Tehsil Pangi, District Chamba, H.P. during

September, 2004 by the Executive Engineer, Killar Division, I.P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P., who had worked as beldar on daily wages and has raised his industrial dispute after more than 7 years vide demand notice dated 02.06.2012, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of delay of more than 7 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the month of September,1998 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/ disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jai Dass who appointed in 1998, Tek Chand in 1999, Baldev in 2000, Amar Nath in 2000, Balak Chand in 2000, Shyam Lal in 2000, Prakash Chand in 2001, Sucheta Ram in 2001, Trilok Chand in 2002, Hari in 2003, Hari Ram in 2003, Ram Dei in 2003 and Budhi Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 02.6.2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P.

by filing CWP no.129/2016 which had been decided on 22.2.2016 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in September, 2004 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1998 to 2004. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of list of workers Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of mandays of workers Ex. RW1/C and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 30.08.2017 for determination:

1. Whether the termination of services of petitioner by the respondent w.e.f. Sept., 2004 is/was illegal and unjustified as alleged? ...*OPP.*

2. If issue no. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? ...*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : Discussed

Relief. : Petition is partly allowed awarding compensation of Rs.65,000/- per operative part of award.

REASONS FOR FINDINGS

*Issues No.*1, 2 *and* 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1998 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this,

the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 11 days in the year 1998, 28 days in 2000, 69 days in 2001, 88 days in 2002, 106 days in 2003 and 101 days in 2004 and thus a total of his service in 1998 to 2004 in 06 years he had worked for 403 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 101 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they

were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India** vs. **S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in crossexamination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation** vs. **M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

17. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd

issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh vs. The Sirhind Co-operative Marketing-*cum*-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the

relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or laches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to *supra.* The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

18. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Ld. Counsel, Ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another *vs.* Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld.

counsel for petitioner, Ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Labour Court that workman had completed 240 days in calendar year and her termination was in violation of Section 25-F of the I.D. Act-Wrokman worked from 1-11-1984 to 17-2-1986 in all 286 days during employment. Her services terminated on 18-2-1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant employer within six weeks failing which interest @ 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947-Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief'.**

20. Repudiating the arguments by Ld. Dy. D.A. for the State, Ld. Counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul** vs. **BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. Counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by Ld. Counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para No.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. Counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase** vs. **Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh** v. **Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC *supra,*** claim of petitioner for

reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another** vs. **Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

21. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para Nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 *supra*) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 403 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 02-6-2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the

petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. More so in view of observation *qua* facts made in judgment **(2016)** *supra,* claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

22. In view of foregoing discussion, a lump-sum compensation of Rs. 65,000 (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues No. 1, 2 and 4 are answered accordingly.

Issue no. 3:

23. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

24. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.65,000 (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement back wages, seniority, past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of October, 2017.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal,*
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) (CAMP AT MANDI)

Ref. No. : 157/2013
Date of Institution : 09-09-2013
Date of decision : 27-10-2017

LPS Danik Wetan Bhogi Karamchari Sangh (BMS), Manali, District Kullu, H.P. through its President ..*Petitioner.*

Versus

The Managing Director, Lahaul Potato Growers Co-operative Marketing-*cum*-Processing Society Ltd., Manali, District Kullu, H.P. ..*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Arvind Kapoor, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether demand No. 1, 3, 4 & 6 raised by the LPS Danik Wetan Bhogi Karamchari Sangh (BMS), Manali, Distt. Kullu, H.P. through its President, *vide* demand charter dated-11-6-2012 (Copy-enclosed) before The Managing Director, Lahaul Potato Growers Co-operative Marketing-*cum*-Processing Society, Manali, Distt. Kullu, H.P. are legal and justified? If yes, what monetary and other reliefs the concerned workmen are entitled to from the above employers?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which petitioner/union has filed their statement of claim.

3. Averments made in the claim petition reveal that petitioner is a union having 22 daily waged workmen as its members working in several business establishments of respondent which had filed a charter of demand dated 11-6-2012 before respondent in which six demand had been raised. It transpires from claim petition that respondent/society is a registered society with Registrar Co-operative Societies, Govt. of H.P. which had been registered in the year 1966 headed by its Managing Director who is competent to take decision in Board of Directors' meeting on behalf of society concerning any staff *qua* termination/promotion, pay scale and other activities of establishment of the society or for its benefits as per bye-laws and service rules and facilities to be provided to its employees *vide* its resolution with approval of Registrar of Co-operative Society, Govt. of H.P. It is further revealed from allegation as contained in the claim petition that Govt. of H.P. through Department of Co-operation/Co-operative Society has been giving 95% grant-in-aid to respondent for business activities and that respondent had several business activities such as hotel Chandermukhi Guest House, Juice Factory and Juice Bar Centre, Petrol Pump Tandi, Wholesale Karyana Shops, Uria Collection Centres, supply of high yielding varieties of seed potatoes and sale of apples to the NAFED. It is alleged that petitioner union has been functioning to

protect the interest of its daily wagers working in different establishments of the respondent which had through its President has filed present claim petition preceded by conciliation proceedings before Labour Officer-*cum*-Conciliation Officer *qua* its six demands as raised in demand charter on 11-6-2012 which were taken up before meeting of working committee of union held under Chairmanship of Shri Sukh Ram, its President. It is alleged that union had raised several demands out of which six demands *vide* separate charter had been conveyed to the respondent which were not accepted and thereafter dispute was brought before the Labour Officer Kullu for conciliation but the demands of union were finally not accepted by respondent due to which Labour Officer-*cum*-Conciliation Kullu had consequently filed failure report under Section 12(4) of the Industrial Disputes Act to appropriate government whereupon reference No.157/2013 was made to this court for adjudication if demands in the charter of demand dated 11-6-2012 were legal and justified and to what monetary relief workmen of union/petitioner were entitled to.

4. It is further alleged that respondent had appointed 27 employees at various posts such as Managing Director, Accountant, Jr. Assistant, Clerks, Record Keeper, Drivers and Helpers in regular pay scale as fixed by the Government of H.P. to its employees such as Basic Pay plus G.P. + D.A. and other allowances as applicable from time to time for which list was filed by petitioner besides pay scales of Fifth Pay Commission to its employees by respondent however 22 daily wagers of the union who had been working at different establishments including at Hotel Chandermukhi since 1991 without any break have not been regularized who had also completed 240 days in calendar year. Averments made in claim petition further revealed that daily waged workmen have their separate union other regular workmen and *vide* charter of demand dated 11-6-2012 raised, first demand raised was to provide a seniority list of regular and daily waged employees whereas 2nd demand was not referred for adjudication. 3rd demand related to respondent to not transfer daily waged workmen from District Kullu to another Districts of H.P. as at the time of appointment of daily waged workmen neither any appointment letter was issued nor terms and conditions were settled. 4th demand, however, related to regularization of daily waged workmen after completion of 10 years regular service besides the union had prayed for releasing of arrears on the basis of revised scales. It is further alleged that respondent had regularized 27 of its employees aforestated from time to time in regular pay scale which had been approved by Registrar Co-operative Society however 22 daily wage workers including eight daily wage workmen of Hotel Chandermukhi and had completed 240 days in each calendar year besides 10 years of service were not regularized. It is alleged that out of 22 employees referred to above as per separate annexure of employees filed by Union/petitioner were clerk, salesman, driver, technician, housekeeping supervisor, stewards, cook and assistant cook were entitled to pay scale *w.e.f.* 1-1-1996 Rs. 3120-5160/- and revised pay scale *w.e.f.* 1-6-2006 Rs.5910-20200/- plus G.P., D.A. and other allowances as applicable to similarly situated employees of respondent and another category of daily waged workmen were helper, chowkidar and room boy who were entitled to pay scale of Rs. 2520-4140 plus G.P. and D.A. and other allowances *w.e.f.* 1st January, 1996 with initial start of Rs. 2620/- per month and revised pay scale *w.e.f.* 1-1-2006 Rs.4900-10680/- +GP and DA and other allowances applicable to similarly situated employees of respondent who had completed 10 years of service. 5th demand however related to payment of overtime to daily waged workmen, 6th demand related to transfer order of Shri Rajan Sharma and Abhey Kumar from Kullu to Tandi and as such this demand primarily related to not apply to transfer policy to daily waged workmen. Accordingly, claimant/petitioner union for its 22 daily waged workmen has prayed for enforcing demands as enumerated in charter of demand dated 11-6-2012 by respondent in particular regularization of services of these 22 daily waged workmen who had completed 10 years of service having completed 240 days in each year besides to pay difference of arrears alongwith interest 12% per annum and to another relief claimant/petitioner union is found entitled.

5. The respondent contested petition, filed reply *interalia* taken preliminary objections *qua* maintainability, claim petition being bad for nonjoinder and mis-joinder of necessary party,

cause of action, *locus standi* and jurisdiction. On merits admitted that respondent is a society registered with Registrar of Co-operative Society H.P. however denied that Managing Director is head of the society rather it is General House of society which is head of society involved in major decision of the society/respondent. Further admitted that Government of H.P. has share capital in society which varies from year to year however denied that 95% grant-in-aid was being given by State of H.P. to respondent. On merits claimed that due to poor financial health of society being in losses, the demand raised for regularization could not have been accepted however rest of the demands as stipulated in Charter of demands dated 11-6-2012 have been accepted much before. It is emphatically denied that regular employees were being paid pay scales as per 5th Pay Commission being paid to H.P. Govt. employees rather regular employees of respondent were being paid scale much less as compared to employees of State of H.P. It is denied that workmen of housekeeping, supervisor, steward, room boy, cook to be employee of respondent besides admitted that respondent has owned Hotel Chandermukhi which has been on lease since 2004 and workmen working in said hotel are employees of lease holder(s) and these employees being daily wagers have been receiving salaries and other allowances from the lease holder of the hotel but denied that these daily wagers had completed 240 days in each calendar year. It is claimed that seniority list of both regular and daily wagers had been affixed on notice board of respondent/society and the same were also supplied to the respondent at time of filing of reply. It is asserted that all the workmen including the daily wage employees are transferred in interest of society however no terms and conditions of their appointment has ever been changed.

6. With regard to demand No. 4 concerning regularization of daily waged workmen of petitioner/union, it is maintained that employees of respondent were regularized earlier in due course of time according to requirement of management and financial conditions of society. It is further claimed that present daily wagers had been appointed as per requirement of work who cannot be regularized merely by reason of continuance of service for several years specifically when the financial condition of society was not well and was unhealthy. It was, however, specifically admitted that as and when financial position of the society would improve and as per requirement, the daily wagers will be regularized as per provisions of Constitution and Rule of the Society besides maintained that no Govt. policy was applicable to society. It is further stated that workmen were not appointed as per norms existing at that time. With regard to payment of overtime to workmen, it is alleged that these workers who had worked overtime have been given overtime to their satisfaction and that S/Sh. Mahshwar Singh and Rajender Kumar had been duly paid their wages and overtime as per record annexed. In so far as S/Sh. Rajan Sharma and Abhay Kumar are concerned they were found guilty of willful absenteeism from duties, disobedience and negligence besides they had misappropriated the cash of society against which recovery proceedings were pending. It is also stated that these workmen had initiated proceedings before Labour Inspector as well as before Registrar Co-operative Societies on the same cause of action and as such they could not claim any relief with the present claim petition. Accordingly, while praying for dismissal of claim petition, it is contended that petitioner union is not entitled to any relief.

7. The petitioner/claimant filed rejoinder, reiterated its stand as maintained in claim petition. It is stated that union/claimant petitioner is unregistered union but its President had been authorized by members of the union to pursue their case. With regard to 95% grant-in-aid by Govt. of H.P., it is alleged that respondent had not submitted/mentioned the share capital of State Govt. and also not submitted any document alongwith reply. With regard to 22 employees of union, they were stated to be working in different establishments but they had never been given any appointment letter and had not prepared any mandays chart revealing attendance. Accordingly, reiterating their stand as maintained in claim petition, the claimant/petitioner has prayed for grant of relief as prayed in the claim petition.

8. To prove its case, petitioner/union had examined Shri Sukh Ram, President, LPS Danik Wetan Bhogi, Karamchari Sangh (BMS) Manali as PW1 tendered/proved his affidavit Ex.

PW1/A under Order 18 Rule 4 CPC, demand notice dated 11-6-2012 Ex. PW1/B, copy of pay scale *w.e.f.* 1-1-2011 to 30-6-2011 Ex. PW1/C, copy of resolution dated 15-9-2011 Ex. PW1/D, copy of list of union members EX. PW1/E, copy of letter dated 6-3-2002 with copy of pay scale Ex. PW1/F, copy of registration of society in May 1966 Ex. PW1/G, copy of karamchari list of hotel Chandermukhi Ex. PW1/H, copy of application regarding regularization dated 17-9-2010 Ex. PW1/I, copy of letter No. 435 dated 11-11-2010 Ex. PW1/J, copy of office order dated 20-10-2011 Ex. PW1/K, copy of letter dated 24-6-2011 Ex. PW1/L, copy of letter dated 24-5-2012 Ex. PW1/M, copy of registration of hotel Chandermukhi dated 25-11-2006 Ex. PW1/N, copy of balance sheet dated 31-3-2014 Ex. PW1/O, copy of Award dated 29-11-2010 Ex. PX1, copy of EPF list of staff LPS Hotel Chandermukhi Ex. PX/2. Shri Rajan Sharma, Secretary, LPS Danik Wetan Bhogi Karamchari Sangh has examined as PW2, tendered/proved proceedings dated 15-4-2012 Ex. PW2/A and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri A.C. Dogra, Managing Director, Lahaul Potato Growers Cooperative Marketing-*cum*-Processing Society Ltd. Manali as RW1 tendered/proved Bye-laws of society Ex. R-1, copy of service rules Ex. R-2, copy of EPF list of staff LPS hotel Chandermukhi Ex. R3 and Ex. R4, copy of certificate of registration of society Ex. RW1/B, amended service rules Ex. RW1/C and Ex. RW1/D, copy of balance sheet Exs. RW1/E1 to E3, copy of detail of accumulated loss of LPS Ex. RW1/F, copy of office order dated 22-7-2010 Ex. RW1/G, copy of corrigendum dated 19-9-2012 Ex. RW1/H, copy of letter dated 8-8-2013 Ex. RW1/I, copy of agreement Ex. RW1/J, copy of letter dated 18-6-2012 Ex. RW1/K, copy of letter dated 19.7.2013 Ex. RW1/L, copy of letter dated 13-5-2013 Ex. RW1/M, copy of letter dated 19-7-2013 Ex. RW1/N, copy of letter dated 11-6-2009 Ex. RW1/O, copy of letter dated 30-12-2009 Ex. RW1/P, copy of balance sheet as on 31-3-2014 Ex. RW1/Q, copy of day book Ex. RW1/V1 to Ex. RW1/V7, copy of agreement Ex. RW1/U1 to Ex. RW1/U5, copy of Award dated 29-11-2010, Mark-A copy of newspaper cutting. The respondent has examined one Shri Makhan Singh Rana, Lease holder of Hotel Chandermukhi, Manali as RW2, tendered/proved copy of EPF list of staff of hotel Chandermukhi Ex. RW2/B and closed evidence.

9. I have heard the Authorized Representative/counsel representing petitioner and Ld. counsel for respondent, gone through records of the case carefully.

10. From the contentions raised, following issues were framed on 09-7-2014 for determination:

1. Whether demands No.1, 3, 4 and 6 raised by the L.P.S. Danik Wetan Bhogi Karamchari Sangh, Manali before the Managing Director, Lahaul Potato Growers Co-operative Marketing-*cum*-Processing Society Ltd. Manali are legal and justified? ...*OPP.*

2. If issue no.1 is proved in affirmative, as to what benefits and other relief to the petitioner are entitled to? ...*OPP.*

3. Whether the petition is not maintainable in the present form? ...*OPR.*

4. Whether the petitioner Karamchari Sangh has no *locus standi* to file the petition? ...*OPR.*

5. Whether this Tribunal has no jurisdiction to entertain the petition as alleged? ...*OPR.*

6. Whether the petition is bad for non-joinder and mis-joinder of the necessary parties? ...*OPR.*

7. Whether the petitioner has no cause of action to file the petition as alleged? ...*OPR.*

8. Whether the petition is not instituted as per the mandatory provisions of law? ...*OPR.*

9. Relief.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes, with regard demand No.4 *qua* regularization

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 :No

Issue No.7 :No

Issue No.8 :No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues no. 1, 2 *and* 7 :

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. At the outset, it is apt to mention here that Ld. Authorized Representative Shri N.L. Kaundal on behalf of claimant petitioner/union of daily waged workmen has made statement before this court on 31-8-2017 that LPS Danik Wetan Bhogi Karamchari Sangh does not press its demands No. 1, 3 and 6 as stipulated in Ex. PW1/B the charter of demand dated 11-6-2012 (Ex. PW1/A) of the union and has thus prayed for relief only with regard to demand No. 4 concerning regularization of 22 daily wage workmen of respondent who are also members of petitioner/union. It is most pertinent to mention here that all the 22 daily waged workmen of union have been shown in list Ex. PW1/E revealing their names, designation, months and years since when they have been working with respondent. Be it noticed that Ld. Counsel for respondent has not at all cross examined petitioner *qua* list of union members Ex. PW1/E of claimant which necessarily establishes that respondent does not dispute correctness of details of employees/daily wage workmen as mentioned therein. It further necessarily follows that these daily wage workmen have also been working since 1991 to 2001 and till the date of reference from appropriate govt. for adjudication and on the date of Charter of demands dated 11-6-2012 Ex. PW1/B all the daily wagers had completed more than 10 years regular service with respondent and before raising their demands an application dated 11-11-2010 Ex. PW1/J had been moved by eight daily waged workmen of Hotel Chandermukhi before respondent for their regularization in service.

14. RW1 Shri A.C. Dogra, the Managing Director of the society has in unambiguous terms in cross-examination has admitted that there was no policy for regularization made by respondent

rather workmen were regularized considering financial position of the respondent/society. Be it noticed that in its reply, respondent has not taken any other defence except that financial health/condition of the society/respondent which was stated to be prime criteria for regularization and nothing has been pleaded regarding availability of sanctioned post on which these daily waged workmen could be regularized or had been regularized earlier which goes to show that in absence of any policy for regularization of respondent as admitted by RW1 and also without availability of sanctioned regular post(s), the respondent could decide to regularize of service of workmen at any point of time taking into consideration the financial condition of society and it was not necessary that workmen should have put specific minimum number of years of service. Even Bye-law (Ex. R1) and Service Rules (Ex. R2) which got approval of Assistant Registrar Co-operative Society on 18-7-1990 nowhere stipulated about regularization of workmen except that certain conditions had been provided in Appendix Ex. R1 which merely provided criteria for direct recruitment and for promotion. This Appendix clearly provided that for promotion workmen needed to have minimum five years experience for the post of serial No. 1 to 6 however serial No.7 dealt with post of peon, chowkidar, conductor, driver who should have minimum experience of three years required for direct recruitment which does not deal with promotion. It is pertinent to mention here members of claimant/petitioner as shown in Ex. PW1/E are driver, clerk, salesman, helper, chowkidar, steward, room boy, cook and assistant cook, technician, supervisor, housekeeping whereas Ex. R10 produced by respondent showed only 11 daily wage employees although list of union shows that it had 22 daily wages employees. Be it stated that RW1 Shri A.C. Dogra, has admitted that Ex. R2 Service Rules dealt with only two categories of employees namely permanent and temporary employees besides he has specifically admitted in cross-examination that the members of union/petitioner were also temporary employees. Rule 5 (d) of Service Rules Ex. R2 is in consonance with the version of RW1 Shri A.C. Dogra who has admitted in cross examination that members of union also fell in the category of temporary employees.

15. Stepping into witness box as PW1 Shri Sukh Ram, President of union of daily wagers has sworn in affidavit Ex. PW1/A reiterating stand of union/petitioner, as maintained in the claim petition. In cross-examination, he has admitted that the union was not registered but he had been authorized by union to conduct the case. PW1 has also admitted that scales provided in Ex. R1 and R2 were different from the government scales besides admitted that basic pay and scales of regular employees were different and scales which were given to daily wage, *adhoc* and contract employees were different from regular employee. In his affidavit, said Sukh Ram has prayed for regularization of daily wagers in view of judgment of Mool Raj Upadhayay of Hon'ble Apex Court besides has prayed for payment of arrears consequent upon regularization of daily waged workers after 10 years regular service as claimed. He has specifically stated that employees enumerated in Annexure P2 exhibited as Ex. PW1/C had been given pay scales of 5th Pay Commission as given to govt. employees in H.P. by respondent and these scales of different categories of employees have been shown in Ex. PW1/D but daily waged workmen as shown in Ex PW1/E working since 1991 onwards have neither been regularized nor given benefit of Fifth Pay Commission irrespective of fact that decision to implement 5th Pay Commission could be implemented in 2011 as is evident from Ex. PW1/C. From the testimony of petitioner and cross-examination of respondent, it is established that eight daily waged workmen had been working with the Hotel Chandermukhi out of 22 union members, were infact engaged by respondent prior to 2004 as Hotel Chandermukhi was leased out for the first time in 2004 as the list of daily wage workmen shown in Ex. PW/1/E revealed that all the employees mentioned therein had been engaged prior to 2004. It necessary follows that these daily waged workmen were employed by respondent considering exigency of work without settling their terms and conditions of appointment or issuing any letter of appointment to them.

16. Ld. Authorized Representative for petitioner/union has contended that even if these union members of claimant were working as daily wage workmen certainly EPF contribution was

deposited by the management of respondent. It is pointed out that at present Sh. Makhan Singh (RW2) has taken Hotel on lease *vide* agreement Ex. RW1/U dated 30-5-2015 for three years *i.e.* till 18-5-2018 and prior to it, he had taken on lease vide agreement Ex. RW1/U3 dated 19-5-2009. Although RW2 Sh. Makhan Singh made futile attempt to say that all the eight daily waged workmen were his employees and that salary & EPF and other benefits to these workmen of Hotel Chandermukhi were being paid by him but RW1 has contradicted by admitting that management of respondent was paying EPF of Hotel Chandermukhi. Be it stated RW2 has admitted in crossexamination that he had not taken any licence from Labour Office to run the hotel on lease which goes to show that provision of Section 12 of Contract (Labour & Abolition) Act, 1970 had not been complied with in view of judgment referred in **2010 LLR 1165** in which Hon'ble Court has clearly held that since contractor did not hold a valid licence as contemplated under Section 12 of the Act 1970 aforestated the workmen as engaged would be presumed to be employee of Principal Employer and not of contractor and in case of termination, workmen would be entitled for reinstatement.

> "Contract Labour (Regulation and Abolition) Act, 1970-Section 12. Licensing of contractor. Absence of licence for engaging personnel on security duty. Consequences of."

A bare glance at the judgment aforestated would reveal that if the contractor did not obtain valid licence as provided under Section 12 of Regulation and Abolition Act, 1970 a workman engaged would be presumed to be employee of the Principal Employer even if engaged by contractor who did not obtain licence as stated above. With the aid of this judgment, it has been contended that since RW2 Makhan Singh has admitted to have not obtained any licence from Labour Office to run hotel while taking Hotel & Guest House on lease , it would be presumed that respondent society is the Principal Employer of all workmen engaged by contractor in Hotel & Guest House. It has also come in the testimony of RW1 Shri A.C. Dogra in cross-examination that RW2 Makhan Singh did not have any EPF account besides RW1 has also admitted that EPF contribution of daily waged workmen of Hotel Chandermukhi was deposited by respondent which also leads irresistible inference that respondent society is Principal Employer of eight employees of Hotel Chandermukhi and mere fact that document regarding EPF contribution was signed by RW2 does not establish that EPF contribution of daily waged workmen who were eight in number of Hotel Chandermukhi was factually paid by RW2 particularly when RW1 has admitted that EPF of daily wage workmen was paid by management of respondent. In view of foregoing discussion, it can be safely concluded that all the eight daily waged workmen out of 22 workmen as reflected in Ex. PW1/E had been engaged by respondent much before 2004 when the Hotel was leased out for the first time as correctness of the list of daily wagers Ex. PW1/E has not been disputed by the respondent while cross-examining petitioner as stated above establishing that respondent society is Principal Employer of all eight workmen. Although it was not established specifically where remaining 14 daily waged workmen were deployed in the establishments of respondent/society but it has come in the evidence that there existed more than 10 establishments of respondent/society and thus working of 14 daily wage workmen to have been working in different establishments is not ruled out. Be it noticed that it has been denied by the respondent that 22 daily wage workmen were not workmen of respondent rather it made futile attempt to prove that 8 daily wage workmen were employee of RW2 who had taken Hotel Chandermukhi on lease but nothing has been stated about remaining 14 daily wage workmen clearly show falsity of plea so taken by respondent. It has come the evidence that the daily waged workmen had been appointed without issuing any letter of appointment(s) to them by respondent. However, it has been satisfactorily proved that these daily waged workmen have rendered more 10 years of service besides they had also completed 240 days in each calendar year particularly when respondent has not produced any record *qua* attendance or mandays chart of these daily wage workmen to controvert the allegation of claimant/Union on the point of these 22 workmen to have worked less than 240 days. As such, this court is left with no option but to hold that all the daily wage 22 workmen as shown in Ex. PW1/E had worked for 240

days in each calendar year and had rendered more than 10 years of services to respondent and for said reason, it is also to be held that while recruiting these daily waged workmen requisite qualification & experience of these workmen had been taken into consideration by respondent moreso when these daily wage workmen have by now worked for such a long time with respondent.

17. Ld. Authorized Representative for petitioner union had relied upon the judgment of Hon'ble Apex Court titled as **Umrala Gram Panchayat** vs. **The Secretary, Municipal Employees' Union & Ors.** reported in **2015 LLR 449** in which Hon'ble Apex Court has held that it was appropriate to treat the services of the daily wagers as permanent after 5 years of their initial appointment till their superannuation. The relevant para of this judgment reproduced below for reference:—

> "**Regularization. Daily-wagers. When justified. Workmen had completed services from 5 years to 18 years as daily-wagers as Safai Kamdars. They were not being paid wages, allowances and other benefits equal to permanent Safai Kamdars**. Workmen raised an industrial dispute for their regularization. Conciliation process ended in failure. Labour Court directed the Management to pay wages, allowances and benefits to the workmen for which they are legally entitled. Management challenged the Award by filing writ petition which was dismissed by the learned Single Judge. Writ appeal filed by the Management did not succeed. Management filed appeal in Supreme Court. Held, work being performed by the workmen, working hours were same. **Discrepancy in wages of permanent and non-permanent workmen is alarming. Work being performed by the workmen is of permanent nature.** There is no restriction for recruitment of workmen as daily-wagers. Management of Panchayat would have no difficulty to bear the extra cost towards wages and other benefits since there are no financial unsoundness with the Management. **Hence, it is appropriate to treat the services of the daily wagers as permanent after 5 years of their initial appointment till their age of superannuation. Workmen be paid regular pay-scale as per revised pay-scale.** Appeal is disposed of accordingly. Paras 10 to 12 and 17 to 19.

It has been observed by the Hon'ble Apex Court in the aforestated judgment that discrepancies of wages between daily wager having rendered service of 5 years or more & permanent workmen is not permissible in law. It has been clearly held that regularizing a daily wager after completion of **5 years continuous service was justified** and with paying less wages and other benefits to daily wagers in comparison to permanent employee, tentamounts a practicing, **unfair labour practice'** which also amounts to violation of principle of 'equal work, equal pay'. Although RW1 Shri A.C. Dogra, Managing Director of the respondent had denied in cross-examination to be recoursing to unfair labour practice but apparently daily wage workmen who have been working for more than 10 years with respondent are getting insignificant salary to those permanent employees in the same post and cadre. Not only this PW1 Sukh Ram, President had been terminated from service while working with the respondent and before that he was given break in service and my Ld. predecessor in this Court *vide* Award dated 29-11-2010 Ex. PX1 has held that respondent in giving break and terminating said Sukh Ram had been held to have practiced **'unfair labour practice'** as has been observed in para No. 27 of the Award Ex. PX1 which is quite material and reflected working of the respondent/society. It may be stated that said Sukh Ram who had been given short break in his service and was terminated was infact present President of union who has instituted the present claim petition against respondent.

18. Ld. Authorized Representative has argued that observation made in Umrala Gram Panchayat's case (*supra*) has further been followed in case titled as **ONGC Ltd. and Petroleum**

Labour Union and Ors. reported in **2015 (146) FLR 443** and in **2014 (142) FLR 987**. Reliance has further been placed by petitioner upon judgment titled as **HP State Industrial Development Corporation Ltd. and Rajesh Kumar Kashyap** in which Hon'ble High Court of H.P. (DB) has held that a model employer is under an **obligation to conduct itself with high probity and expected candour**. In the case in hand, respondent has under the garb of its poor financial condition is denying legitimate rights. In CWP No.5318/2013 decided on 8-5-2015 titled as **Seema Mehta** vs**. Chairman-**cum-**Deputy Commissioner and Anr.** in which claimant/petitioner was not regularized for 26 years and the Hon'ble High Court of H.P. had held that non-regularization of its employees who had been working 26 years could not be denied as employee of State Govt. are regularized after seven years of service. In another judgment reported in **2017 (154) FLR 739** titled as **Executive Engineer, Maharashtra State Electricity Board** and **Sunil Shantram Satakar** Hon'ble Apex Court has held as under in its judgment & relevant para is reproduced below:

> **"Regularization. Reinstatement. Permanency in Class-IV.** Respondent has been working as daily wager for last more than 25 years. In case any such workmen have been made permanent **there is no justification in denying a similar treatment to respondent.** Appellants are directed to consider the cases of respondents and grant similar treatment to such similarly situated workmen. [Para 3]

19. Ld. counsel for respondent, on the other hand relied upon the judgment reported in **2016 (1) Him. L.R. (DB) 457** titled as **Vijay Sood** vs. **Central University of HP Dharamshala and connected matters AIR 1994 SC 1638, AIR 1995 SC 2325, AIR 2007 SC 2733**. I have gone through these judgment which are not at all attracted in the present case having different facts and controversies involved. Otherwise also, in view of the latest judgments of Hon'ble Apex Court pertaining to year 2015 relied upon by the petitioner, the judgment relied upon by the respondent would not apply in the present case. Be it noticed that judgments reported in **AIR 1994 SC 1638, AIR 1995 SC 2325, AIR 2007 SC 2733** dealt with regularization of employees could be done only when there existed sanctioned regular post. It is pertinent to mention here that respondent in its reply has nowhere taken such defence for not regularizing daily waged workmen due to nonavailability of sanctioned regular post(s) rather it had emphasized only on poor financial condition of respondent and it was also maintained in reply that **as and when the financial condition of the respondent society would improve, in that eventually respondent would consider regularization of 22 employees of union subject to bye-laws and service rules of respondent/society.** Despite assurance of respondent as stated above, fate of 22 daily wagers cannot be left at the mercy of respondent who have rendered more than 10 years regular service as stated above moreso when similarly situated workmen were given scales of 5th Pay Commission long before as to 27 employees as reflected in Ex. PW1/C and scales shown in Ex. PW1/D were accepted and given to employees of respondent.

20. In so far as poor financial position of respondent is concerned, balance sheet pertaining to the year 2014 Ex. RW1/Q has been relied by respondent which showed profit of respondent of Rs. 2.04 crores and that loss of Rs. 27.40 crores had been brought forward. Ld. Authorized Representative for petitioner has contended with vehemence that the loss of Rs.27.40 crores which has been brought forward in the year 2014 from several previous years could not be stated to have caused in preceding three years rather it might have been carried forward from last several years even when the 27 employees as reflected in Ex. PW1/C were regularized and given new scales in pursuance to resolution No.6 dated 18-2-2002 Ex. PW1/F. It may not be erroneous to mention here that respondent has nowhere proved the years from which this loss of 27.40 crores had been carried forward. RW1 Shri A.C. Dogra has not thrown in light upon the said financial loss of Rs.27.40 crores and period from which this loss has been originally carried forward and thus it cannot be stated to have occurred when present claim petition was filed. Even 5th Pay Commissioner to State Govt. was adopted for employees of respondent on the basis of resolution No.6 dated 15-9-2011.

RW1 Sh. A.C. Dogra has not whispered even a single word about the period for which financial loss related. As such under the garb of poor financial condition of society/respondent, the daily waged workmen of petitioner union were not given their legitimate rights as stated above. In view of the foregoing, the union members who are daily wagers are liable to be regularized as well as are held entitled to be paid new scales as reflected in Ex. PW1/D and adopted by respondent for its employees.

21. Ex. R2 relied upon respondent showed cadre of service at page 3 showing pay scale of employees at serial No.8 who are clerks, drivers, salesmen whereas serial No.9 showed scales of peon, chowkidar and conductor. Be it noticed that it is specifically provided in notification that pay scales would also be applicable to temporary staff enforceable on 1-5-1987. RW1 has specifically admitted that daily wagers who have raised this industrial dispute are temporary employees thus establishes the claim of daily wagers who were entitled for scales as referred to above. It also provided in Ex. R2 that society might consider revision of pay at its own keeping in view financial position of society. Not only this, RW1 has shown ignorance if employees mentioned at serial No.9 to 15 as shows in Ex. R9 were regularized after five years besides he did not know about their scales. RW1 A.C. Dogra despite being Managing Director of the society shown ignorance if employees at serial No. 9 to 15 had been regularized after five years of service which shows that respondent through RW1 was withholding and suppressing material facts to defeat claim of petitioner who has 22 daily waged workmen and had completed 10 years of regular service whereas it appears that some of the employees figured at serial No.9 to 15 had been regularized even after five years particularly when this fact has not been specifically denied by RW1. Thus, the facts reveald by RW1 A.C. Dogra further strengthen the plea of petitioner union *qua* regularization of daily waged workmen who have rendered 10 years of continuous service as has been claimed by petitioner.

22. In so far as claim of the claimant/petitioner for revised scales and difference of arrears are concerned, it would be pertinent to refer to para no. (iv) (i) of claim petition which is reproduced verbatim:

> "…Clerks, salesman, driver, technician, housekeeping supervisor, stewards, cook and assistant cook in pay scale 01-01-1996 Rs.3120-5160/- and revised pay scale w.e.f. 1-1-2006 **Rs.5910-20200/- + G.P. and D.A. and other allowances** as applicable to similar situated employees of the respondent and the category of helper, chowkidar and room boy are entitled the pay scale *w.e.f.* **1-1-1996** Rs.2520-4140/- initial start Rs. 2620/- per month and revised pay scale *w.e.f.* **1-1-2006 Rs.4900-10680/- +G.P. and D.A. and other allowances applicable** to similar situated employees of the respondent from time to time and all are entitled arrears after completion of 10 years of continuous service as per the policy framed by the State Govt. and adopted by respondent…."

Although petitioner in cross-examination as PW1 had admitted that according to constitution and service rules, the scales of employees of respondent are different from those being paid to government employees but in such like situation, it was incumbent upon the respondent to have specifically prove on record that actually employees of respondent were getting lesser scales as compared to those employees working with HP Govt. which has not been brought in evidence by respondent. Ld. Authorized Representative for petitioner has referred to fitment chart of employees of respondent as on 1-01-2011 to 30-6-2011 which showed that the clerks had been given pay scale of Rs. 5910-20200/- whereas these scales were also given to driver, daftri as well as to Junior Assistant. It is further observed that Accountants, Field Asstt., Public Relation Asstt. figuring at serial No. 4 of fitment chart given scale of Rs.10300-34800/- and Managing Director too was given same scale. Ex. PW1/D 5th pay commission of employees of respondent, it had been sanctioned by Managing Committee of society *vide* its resolution dated 15-9-2011. Ex. PW1/D showing various

categories of employees their revised scale, basic pay, revised pay scale revised basic pay and serial as mentioned in the fitment table. It has nowhere come in the evidence as to what scales were actually being given to employees of the H.P. Govt. and it was necessary for the respondent to have proved so on record as to how much less salaries etc. were paid to 27 employees as shown in Ex. PW1/C. In absence of the same, it would be unsafe to hold that employees of respondent were getting lesser salary and mere statement of RW1 on oath not supported with any documentary evidence cannot be accepted so as to defeat the claim of Union *qua* its members on this score. Ld. counsel for the respondent has relied upon Ex. PW1/F dealing with approval of amendment in pay rolls of the society. Minor scrutiny of this document dated 11-8-2002 presided over by Shri Surender Thakur revealed that resolution was passed in which recommendations of 5th pay commission were specifically accepted by society/respondent. It further provided that all the employees were to be given scales from 1-1-1993 and were also to be given Assured Carrier Progression Scale after completion of 8 years, 16 years and 24 years of service respectively. This document establishes the plea of petitioner that infact the respondent accepted 5th pay commission although these recommendations of 5th pay commission could be finally implemented in the year 2011. Thus, testimony of RW1 A.C. Dogra that the employees of respondent were getting less salary from the government employees could not be accepted and this court is left with no option but to hold that revised pay scale paid to 27 employees of respondent as reflected in Ex. PW1/C as well as revised pay scale as reflected in Ex. PW1/D would also be applicable to daily wagers of union. It is also unexplained that under what circumstances these 27 employees had been given revised pay scale when the financial conditions of the respondent/society was not good or financial health was in poor condition as claimed by it as some part of loss of 24.40 crores as reflected in balance sheet Ex. RW1/Q brought back from the previous year existed when resolution no.6 dated 15-9-2011 was passed *vide* which revised pay scales had been given to all 27 employees of respondent as stated before. Thus, under the garb of poor financial health respondent is deliberately ignoring legitimate rights of claimant/petitioner and its union members who were entitled for same scales as had been reflected in Ex. PW1/D on record. Accordingly, the 22 daily wagers who are members of Union/claimant are required to be regularized after completion of 10 years continuous service and are also entitled for arrears as discussed above. Since the claimant/petitioner has successfully established their claim qua demand No.4 of the charter of demands Ex. PW1/B as discussed in foregoing paras, it cannot be stated that petitioners did not have cause of action to file the petition. Since demands No.1, 3 and 6 had not been pressed by Ld. Authorized Representative of the petitioner union as stated above as such demands No. 1, 3, 6 as mentioned in reference no.157/13 received from appropriate govt. are decided unpressed and this court has only dealt with demand No. 4 of reference aforestated with regard to regularization of all the 22 daily wage workmen of union/petitioner and entitlement of revised pay scales and payment of arrears on account of difference in basic pay other benefits to which union members are entitled as stated above and salaries which 22 union members had received. In view of foregoing discussion, issue No.1 is decided partly in affirmative as stated in favour of petitioner and against respondent however issue No. 2 is decided as discussed above whereas issue No.7 is decided in negative. All these issues are decided in favour of petitioner as stated above and against respondent.

Issues no.3 and 4:

23. The issue of maintainability was not pressed by Ld. Counsel for respondent. Otherwise also, from pleadings and evidence on record, it is nowhere established in what manner the claim petition of the union is not maintainable. In so far as claim of respondent that petitioner union has no locus standi, it would be relevant to refer to judgment of Hon'ble Apex Court reported in **AIR 1960 SC 1328** in which the Hon'ble Apex Court has unambiguous terms held that cause of workmen can be taken up by even unregistered union, that being so the objection of *locus standi* of petitioners to institute the present claim petition ceases to have any relevance. In another judgment of Hon'ble High Court of H.P. reported in **2009(2) RSJ 163** titled as **Phagu Ram** vs. **Birla Txtile**

in which the Hon'ble High Court of H.P. has held that espousal of industrial dispute could be made by trade union which is not required to be registered trade union. The relevant para of the said judgment reproduced below:

> "23. It is settled law by now that it is not necessary for espousal of the grievance of the members by the Union, it should be registered. Their Lordships of the Hon'ble Supreme Court have held in Newspapers Ltd. Allahabad *vs.* U.P. State Industrial Tribunal and others, AIR 1960 SC 1328 that cause of workman can be taken up by unregistered association of workmen. Their Lordships have held as under (Para 4):
>
> "Then it was urged that the association which sponsored the case of respondents 3 to 5 was an unregistered body and that made the reference invalid. Both the Courts have held, and rightly, that it is not necessary that a registered body should sponsor a workman's case to make it an industrial dispute. Once it is shown that a body of workmen, either acting through their Union or otherwise had sponsored a workman's case it becomes an industrial dispute" Accordingly, the claim petition is held maintainable and claimant/petitioner cannot be stated to have no *locus standi* to file the present claim on behalf its members. Both these issues are answered in negative in favour of petitioner union and against the respondent.

Issue no.5:

24. Ld. Counsel for the respondent/society has contended that this Tribunal has no jurisdiction to entertain the case as the daily wagers are the employees of cooperative society. On the contrary, Ld. Authorized Representative for the petitioner union has repudiated arguments advanced by Ld. Counsel for respondent and placed reliance upon the judgment of Hon'ble High Court of H.P. reported in **Latest HLJ 2007 (HP) 713** and relevant part of this judgment is reproduced below:

> "Himachal Pradesh Cooperative Societies Act, 1968- Section 72 read with Section 25 and Chapter V-A of the Industrial Disputes Act, 1947. Jurisdiction of Industrial Tribunal. **The Industrial Tribunal has the authority, power and jurisdiction to entertain and decide the reference made to it with respect to the employees of the Cooperative Societies.'**

In view of the judgment of Hon'ble High Court and there being no case law referred by Ld. Counsel for respondent/society to controvert plea of petitioner, this Court is left with no option but to hold that this Tribunal has jurisdiction to try and entertain the present claim petition of employees of cooperative society irrespective fact that daily wagers of the union has not been registered under the H.P. Cooperative Societies. Issue no.5 is accordingly answered in favour of petitioner and against the respondent.

Issue no.6:

25. Ld. Counsel for petitioner has contended that in reply to claim petition respondent has not mentioned as to how the petition is bad for non-joinder of necessary party or mis-joinder of necessary parties. In absence of specific plea which is vague, the same merits rejection and it is held that petition is not bad for non-joinder and mis-joinder of necessary parties. Issue No. 6 is accordingly answered in negative in favour of petitioner union and against the respondent.

Issue no. 8 :

26. Ld. Counsel for respondent has not pressed this issue. Otherwise also, from pleadings and evidence in record the inference of petition having not been instituted as per mandatory

provisions of law could not be inferred. It is nowhere stipulated in reply as to which provision of law has not been complied by petitioner while instituting present claim petition. Hence, this issue is decided in negative against the respondent and in favour of petitioner union.

RELIEF

27. As sequel to my findings on foregoing issues, the present claim petition succeeds and same is partly allowed. Accordingly, respondent is hereby directed to regularize forthwith services of all the 22 daily wage workmen of claimant-petitioner/union who have completed 10 years regular service as reflected in Ex. PW1/E as per demand No.4 of Charter of demand dated 11-6-2012 Ex. PW1/B of the union/petitioner. It is further directed that after regularization of services of members of claimant-petitioner they shall be entitled for revised Pay Scales as reflected in Ex. PW1/D as stated above besides daily wage workmen aforestated would also be entitled for G.P.+D.A.+ other allowances to similarly situated employees of respondent/society. It is further directed that respondent/society shall pay all daily wage workmen arrears of salaries and allowances as stated from the period when daily wage workmen as shown in Ex. PW1/E completed 10 years regular service and salaries actually received by them after regularization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of October, 2017.

Sd/-
(K.K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(CAMP AT MANDI)**

Ref. No. : 231/ 2014

Sh. Karam Chand s/o Sh. Manohar Lal, r/o Village Chandesh, P.O. Gahar, Tehsil Sarkaghat, Distt. Mandi, H.P. *...Petitioner.*

Versus

1. M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office).

2. M/s Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area Mohali (Area Office). *...Respondents.*

27-10-2017 Present: None for the petitioner.

Sh. Rajat Sahotra, adv. csl. for the respondent No.1.

Sh. Neeraj Kapoor, adv. csl. for the respondent Nos. 2.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.40 A.M. Be awaited and put up after lunch hours.

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

27-10-2017 Present: None for the petitioner.

Sh. Rajat Sahotra, adv. csl. for the respondent No.1.

Sh. Neeraj Kapoor, adv. csl. for the respondent Nos. 2.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.42 P.M. None appearance of petitioner or his Ld. Csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
27-10-2017

Sd/-
(K. K. Sharma)
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

ब अदालत श्री अपूर्व शर्मा, नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, तहसील ज्वालामुखी, जिला कांगड़ा, हि0 प्र0

मुकद्दमा नं0 11 / NT/18 किस्म मुकद्दमा–मकफूद–उल–खबरी तारीख पेशी 27–04–2018

श्री रमेश चन्द पुत्र श्री शंकर सिंह, निवासी महाल कमलोटा, मौजा कोहाला, तहसील ज्वालामुखी, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

श्री रमेश चन्द पुत्र श्री शंकर सिंह, निवासी महाल कमलोटा, मौजा कोहाला, तहसील ज्वालामुखी, जिला कांगड़ा, हिमाचल प्रदेश ने इस अदालत में प्रार्थना–पत्र पेश किया है कि मेरे पिता श्री शंकर सिंह पुत्र श्री चड़त राम वर्ष 2003 से लापता है जिसके बारे पुलिस थाना ज्वालामुखी में FIR रिपोर्ट दर्ज करवाई गई थी लेकिन आज तक उनका कोई पता नहीं चल पाया इसलिए शंकर सिंह पुत्र श्री चड़त राम वारसान के नाम इंतकाल दर्ज करवाया जाए इसलिए आम जनता को इस इशतहार के माध्यम से सूचित किया जाता है कि अगर किसी को इस बारे में कोई उजर हो तो वह वकालतन या असालतन 27–04–2018 को अधोहस्ताक्षरी की अदालत में पेश करें गैर हाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 03–04–2018 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
तहसील ज्वालामुखी, जिला कांगड़ा।

In the Court of Shri Niraj Chandla (H.P.A.S.), Sub-Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Shri Bhupinder Chauhan son of Shri Shyam Lal, resident of Village Dadahu-Chuli, P.O. Dadahu, Tehsil Dadahu and District Sirmaur, Himachal Pradesh ..*Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Shri Bupinder Chauhan son of Shri Shyam Lal, resident of Village Dadahu-Chuli, P.O. Dadahu, Tehsil Dadahu and District Sirmaur, Himachal Pradesh has preferred an application to the undersigned for registration of his son namely SACHINE CHAUHAN (DOB 14-09-2012) at above address in the record of Municipal Corporation, Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 30-04-2018 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 31st day of March, 2018.

Seal. NIRAJ CHANDLA,
Sub-Divisional Magistrate,
Shimla (Urban) District Shimla, H.P.

CHANGE OF NAME

I, Payar Chand s/o Shri Gayatri Dutt. Sharma, r/o Village Kot Dhalyas, P.O. Kot Khamradha, Tehsil Aut, District Mandi, H.P. have Changed my name as Nishant Sharma as per decision of the court [Civil Judge (junior division), Court No. 4, Mandi, H.P.] Dated 13-03-2018. All concerned may note please.

PAYAR CHAND ,
s/o Shri Gayatri Dutt. Sharma,
r/o Village Kot Dhalyas, P.O. Kot Khamradha,
Tehsil Aut, District Mandi, H.P..

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है